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MEETING

STATE OF CALIFORNIA

INTEGRATED WASTE MANAGEMENT BOARD

PERMITTING AND ENFORCEMENT COMMITTEE

JOE SERNA, JR., CALEPA BUILDING

1001 I STREET

2ND FLOOR

COASTAL HEARING ROOM

SACRAMENTO, CALIFORNIA

MONDAY, AUGUST 4, 2003

1:00 P.M.

JAMES F. PETERS, CSR, RPR
CERTIFIED SHORTHAND REPORTER
LICENSE NUMBER 10063

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

APPEARANCES

COMMITTEE MEMBERS

Michael Paparian, Chairperson

Steve Jones

Cheryl Peace

STAFF

Mark Leary, Executive Director

Julie Nauman, Chief Deputy Director

Elliot Block, Acting Chief Counsel

Sharon Anderson

Michael Blesoe, Staff Counsel

Mark de Bie

Reinhard Hohlwein

Willie Jenkins

Wes Mindermann

Lisa Sloane

Allison Spreadborough

Scott Walker

John Whitehill

Brad Williams

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APPEARANCES

ALSO PRESENT

Shari Afshari, Department of Public Works, LA County

Mark Aprea, Republic Services

Tom Davis, Justice & Associates

Denise Delmatier, NorCal Waste Systems

Will Dickinsen

Theresa Dodge, LA Sanitation District

Donald Gambelin, NorCal Waste Systems

Karen Hansen, Midwest Industrial Supply

Chuck Helget, Allied Waste

Rick Lymp, Right 2 Know

Mark Murray, Californians Against Waste

Cyrus Sanai, Jeffer, Mangai, Butter and Marmero

Larry Sweetser, Rural Counties

Chuck White, Waste Management

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INDEX	PAGE
Roll Call And Declaration Of Quorum	1
A. Deputy Director's Report	2
B. Consideration Of A New Full Solid Waste Facilities Permit (Transfer/Processing Station) For The MarBorg C&D Recycling & Transfer Facility, Santa Barbara County -- (August Board Item 23)	10
Motion	12
Vote	12
C. Consideration Of A Revised Full Solid Waste Facilities Permit (Disposal Facility) For The Western Regional Sanitary Landfill, Placer County (August Board Item 24)	-- 13
Motion	18
Vote	18
D. Consideration Of A Revised Full Solid Waste Facilities Permit (Transfer/ Processing/Compostable Materials Handling Facility) For The Western Placer Waste Management Authority Materials Recovery Facility, Placer County -- (August Board Item 25)	13
Motion	19
Vote	19
E. Discussion And Request For Rulemaking Direction On Noticing Revisions To The Proposed Regulations For Revised Alternative Daily Cover Regulatory Requirements For An Additional Comment Period -- (August Board Item 26)	19
F. Discussion And Request For Rulemaking Direction On Noticing Revisions To The Proposed Regulations For Construction And Demolition Waste And Inert Debris Disposal Regulatory Requirements For An Additional Comment Period -- (August Board Item 27)	87
Public Comment	163
Adjournment	163
Reporter's Certificate	164

1 PROCEEDINGS

2 CHAIRPERSON PAPARIAN: Good afternoon, everybody.

3 This is a meeting of the Permitting and
4 Enforcement Committee.

5 We'll start with our roll call.

6 Secretary, please call the roll.

7 SECRETARY KUMPULAINIEN: Jones?

8 COMMITTEE MEMBER JONES: Here.

9 SECRETARY KUMPULAINIEN: Peace?

10 COMMITTEE MEMBER PEACE: Here.

11 SECRETARY KUMPULAINIEN: Paparian?

12 CHAIRPERSON PAPARIAN: Here.

13 Any ex partes, members?

14 Mr. Jones.

15 COMMITTEE MEMBER JONES: Just John Cupps.

16 CHAIRPERSON PAPARIAN: I'm up to date.

17 And Ms. Peace.

18 COMMITTEE MEMBER PEACE: I'm up to date also.

19 CHAIRPERSON PAPARIAN: Okay. Just as a reminder,
20 if you have a cell phone or a pager, if you could just
21 turn it to the vibrate mode or turn it off so it doesn't
22 disturb us during this Committee meeting, that would be
23 appreciated.

24 If you want to speak on any item, there are
25 speaker slips in the back of the room. You can bring them

1 up to the Committee secretary, Ms. Kumpulainen, up here
2 in the front of the room.

3 We have several items on the agenda today. I
4 don't think anything is going to be super long. But we'll
5 hear a little update overall starting with Ms. Anderson.

6 MS. ANDERSON: Sharon Anderson stepping in for
7 Howard Levenson, our Deputy Director.

8 On the Deputy Director's report I have four items
9 that I wanted to bring to the Committee's attention.

10 First of all, as Mark Leary, our Executive
11 Director, indicated at last month's Board meeting, the
12 Office of Administrative Law did not approve the
13 requirement regarding OSHA and the C&D Phase 1
14 requirements. Mr. Leary indicated that we would provide
15 an update to the Committee on our past MOU with the
16 Department of Occupational Safety and Health, associated
17 training, and current statutory requirements for LEA
18 referrals to DOSH and potential ideas for additional
19 training.

20 In '99, we entered into an interagency MOU with
21 CalOSHA, DOSH, clarifying respective authority between the
22 Board and CalOSHA, but only relating to enforcement of the
23 transfer and processing operations and facility
24 regulations. And that was -- there were some concerns
25 that were brought up within those regulations as to the

1 ability to protect worker and health and safety.

2 Mike Alvarez, the training coordinator of CalOSHA
3 consultation, provided training for LEAs and Board staff,
4 including speaking at the 1999 annual conference on many
5 topics. So we're able to get a little bit of a leg up at
6 the conference back then on how the LEAs and the Waste
7 Board staff would be viewed in working with CalOSHA's
8 requirements at facilities.

9 However, based on the passage of AB 1127, that
10 was effective January 1st of 2000, DOSH rescinded the 1999
11 MOU with the Waste Board because AB 1127 allowed a
12 representative of a government agency to file a formal
13 complaint with DOSH, thereby expediting the enforcement
14 investigation response time. The resultant provisions to
15 the Labor Code 6309 provide local enforcement agencies
16 with a more effective means of forwarding worker health
17 and safety concerns to DOSH for compliance purposes. LEAs
18 no longer file referrals to DOSH but rather a complaint.
19 And that came out of the law back in 2000.

20 After the MOU was rescinded and the Labor Code
21 was revised in response to AB 1127, we provided two
22 classes in 2002 on understanding CalOSHA, recognizing
23 workplace health and safety violations. Both LEAs and
24 Board staff attended these courses to obtain a better
25 understanding of occupational health and safety

1 enforcement in California, to learn the current procedures
2 for solid waste inspectors in communicating with the staff
3 at CalOSHA, and get an update on workplace health and
4 safety, state and federal laws and regulations.

5 As an outcome of that, we've -- although I don't
6 believe we have documentation, we know that the local
7 enforcement agencies have made their complaints to
8 CalOSHA, who then respond as though the person complaining
9 was an employee of the facility. Because as you know
10 under the Labor Code, the only way that CalOSHA will
11 respond is if there's a death or an accident or if a
12 worker complains about workplace situations, workplace
13 health and safety conditions.

14 Separately though Tom Hanley, the Regional
15 Manager of the High Hazard Region Unit, which is
16 responsible for the target and enforcement of high hazard
17 industry statewide, he spoke at this last conference in
18 2002. And LEAs and the Waste Board staff left the
19 presentation both informed and entertained.

20 We intend to continue offering this type of
21 training and educational opportunities at the next LEA
22 conference. A session with speakers from DOSH will be
23 offered to discuss worker health and safety issues related
24 to construction and demolition and inert debris and other
25 solid waste facilities. So we'll kind of bring ourselves

1 up to date with these types of industries on that.

2 Questions on that piece?

3 CHAIRPERSON PAPARIAN: Any questions on that?

4 MS. ANDERSON: -- on that part.

5 CHAIRPERSON PAPARIAN: Let me just understand the
6 MOU situation. So there was an MOU that was rescinded
7 related to the legislation that you described?

8 MS. ANDERSON: Yes.

9 CHAIRPERSON PAPARIAN: Is it possible to enter
10 into a new MOU that would, you know, further delineate
11 responsibilities or is that --

12 MS. ANDERSON: It's probably not needed, simply
13 because it's very clear what the responsibilities -- we
14 did put out a guidance document to local enforcement
15 agencies that indicated clearly that if they would file a
16 complaint -- and Elliot Block, you need to chime in any
17 point here because you helped us draft the guidance
18 document -- that any time a local enforcement agency saw a
19 situation that might indicate their workplace health and
20 safety concern that they might have or it looked like
21 there might be an imminent threat or hazard in their
22 minds, they could actually file that complaint according
23 to the law, 1127, and that the CalOSHA would respond.

24 And so that's pretty clear.

25 CHAIRPERSON PAPARIAN: Do we know if that's been

1 used very often?

2 MS. ANDERSON: We have not tracked that
3 ourselves.

4 CHAIRPERSON PAPARIAN: Okay.

5 MS. ANDERSON: Short of talking to CalOSHA --

6 ACTING CHIEF COUNSEL BLOCK: My silence is that
7 I'm agreeing with everything that has been said so far.
8 Sorry.

9 MS. ANDERSON: If you need us to, we could check
10 with CalOSHA to see what they have in their data system as
11 far as local enforcement agency complaints on facilities.

12 CHAIRPERSON PAPARIAN: Yeah, I know this was --
13 when we passed that first round of the C&D regs it was a
14 fairly important issue to several of the members that we
15 established this sort of cross training and assurance that
16 worker safety was -- if there were worker safety issues
17 noticed by the LEA, that they would be able to respond and
18 that -- further, that they at least have some knowledge
19 about what might or might not be a worker safety issue or
20 problem.

21 So this is something we may want to explore a
22 little bit more at some point.

23 MS. ANDERSON: And we hope to tackle that, Mr.
24 Paparian. We hope to tackle that at this next
25 conference --

1 CHAIRPERSON PAPARIAN: Okay.

2 MS. ANDERSON: -- when it's scheduled.

3 CHAIRPERSON PAPARIAN: Did you have a question on
4 that?

5 Okay. Go ahead.

6 MS. ANDERSON: The second part of this is along
7 the lines of workplace situations. Mark Leary has made it
8 mandatory that the Board has a policy and does not
9 tolerate unacceptable acts of violence in the workplace.
10 As part of the policy the health and safety shop will be
11 putting on a training later this month about workplace
12 violence and strategies for prevention of workplace
13 violence. The dates for that training -- and it's
14 mandatory for supervisors, managers, and executive
15 directors. The date of that training is August 26th,
16 2003. And I think it's a very timely training at this
17 point.

18 And Marc Arico of the Health and Safety Office is
19 taking the sign-ups as well as Melissa Hoover-Hartwick.

20 Thirdly, on the Bethencourt cleanup Scott Walker
21 mentions that, as we reported to you before, one of the
22 three high priority sites identified in the C&D inventory
23 earlier this year was at Bethencourt in Imperial County.
24 The Board approved a Board-managed cleanup under the 2136
25 program in May. But we were hoping that the operator

1 would get the message and begin taking actions himself.
2 That indeed has happened. The operator brought in
3 equipment to grind the material. And according to the
4 LEA, all of the stockpile processed wood debris has now
5 been taken from the site to the Colmac cogen plant.

6 By a letter dated July 23, the LEA confirmed the
7 site has been cleaned up and the enforcement case is
8 closed. This has been a real success story for the
9 Board's solid waste cleanup CIA programs and the LEA in
10 getting ahead of the problem situation before it really
11 caused problems in cleaning it up.

12 The efforts of Brad Williams of the Board's Solid
13 Waste Cleanup Program and Jeff Lemoore of the Imperial
14 County LEA deserve special appreciation for making this
15 successful enforcement and clean-up case happen.

16 In addition, the Board's CIA program deserve
17 kudos for the statewide prioritization of C&D sites
18 including identification of the Bethencourt site as within
19 the highest priority of enforcement and cleanup.

20 I also want to acknowledge Wes Mindermann and
21 Scott Walker in these areas as well.

22 In the Crippen cleanup, the final cleanup of the
23 Crippen debris pile -- I know that Board Member Jones was
24 out there at the end of last week -- it commenced this
25 past week and it's anticipated to be completed in six to

1 eight weeks. As required by the Board, additional agency
2 contributions and participation in the project are in
3 place, including one million from U.S. EPA for hauling.
4 The project so far is going well.

5 A successful press event was also conducted at
6 the site last Friday. Staff would like to especially
7 thank Board Member Steve Jones for representing the Board
8 at the press event.

9 See Chuan Lee of the Board's Solid Waste Cleanup
10 Program is the project engineer and also deserves special
11 appreciation along of course Wes Mindermann for the
12 success of the project.

13 That's it for the Deputy Director's report. If
14 you have any questions on those items or any other items
15 that you'd like to get clarification on, we'd be happy to
16 talk.

17 CHAIRPERSON PAPARIAN: Members, anything?

18 Mr. Jones.

19 COMMITTEE MEMBER JONES: Crippen will actually be
20 10 to 12 weeks.

21 MS. ANDERSON: Ten to twelve weeks. Okay.

22 All right, then.

23 CHAIRPERSON PAPARIAN: Okay. Go ahead.

24 MS. ANDERSON: At this point, I'm going to turn
25 it over to Mark de Bie because he has all five items that

1 are on our agenda today. And he's going to be the man in
2 charge from hereon out.

3 MR. de BIE: Thank you, Sharon.

4 Mr. Chair, Committee members. The first item is
5 Item 23, which is Committee Item B, which is the
6 consideration of a new Full Solid Waste Facility Permit
7 (Transfer Processing Station) for the MarBorg C&D
8 Recycling and Transfer Facility, Santa Barbara County.

9 And Willie Jenkins is going to make the
10 presentation.

11 MR. JENKINS: Good afternoon, Mr. Chair and
12 members of the Committee.

13 Agenda Item 23 is for a consideration of the new
14 Full Solid Waste Facility Permit for the MarBorg C&D
15 Recycling and Transfer Facility.

16 At this point I just wanted to mention there was
17 an error item, Agenda Item 23, Attachment 3, page number
18 3. The wrong page was inserted into that part of the
19 document.

20 And you have the correct version in your hands
21 there.

22 The facility is owned by the Asti Holding Company
23 and operated by MarBorg Industries Incorporated. The
24 proposed facility will be developed on a two and a half
25 acre parcel at 119 Quarantina Street in the City of Santa

1 Barbara.

2 The proposed permit will allow the facility to
3 process up to 750 tons per day of municipal solid waste,
4 green waste, yard trimmings, construction and demolition
5 waste, bulky metal, and inerts. It will also receive up
6 to 580 vehicles per day. The hours of operation will
7 be -- for waste received operations will be Monday through
8 Friday, 6 a.m. to 6 p.m.; Saturday, 6 a.m. to 4 p.m.;
9 processing and transfer, Monday through Friday, 6 a.m. to
10 10 p.m.; Saturday, 6 a.m. to 4 p.m.

11 All operations will be closed on recognized
12 holidays.

13 Board staff is not aware of any issues or
14 opposition.

15 Board staff has determined the facility meets all
16 the requirements except for the conformance finding for
17 the City of Santa Barbara NDFE.

18 In conclusion, staff recommends that the Board
19 adopt Resolution No. 2003-406, concurring with the
20 issuance of Solid Waste Facility Permit No. 42-AA-0066,
21 contingent on the approval of the City of Santa Barbara
22 NDFE at the August 12th through 13th Board meeting.

23 This concludes staff presentation.

24 And Lisa Sloane for the LEA and Chip Clements and
25 Mario Borgatello for the operator are here.

1 CHAIRPERSON PAPARIAN: Okay. So that it -- the
2 NDFE, as I understand it, is up ahead of this agenda item.
3 So if for any reason that is not on consent -- well, we
4 just want to make sure that this item comes either
5 simultaneously or after the NDFE item.

6 Any questions about this item, members?

7 Mrs. Peace.

8 COMMITTEE MEMBER PEACE: I just had one.

9 This new facility, is it totally enclosed?

10 MR. JENKINS: Yes, it is.

11 COMMITTEE MEMBER PEACE: Okay, great. Thank you.

12 CHAIRPERSON PAPARIAN: Mr. Jones.

13 COMMITTEE MEMBER JONES: Thanks, Mr. Chair.

14 I'll move adoption of Resolution 2003-406.

15 COMMITTEE MEMBER PEACE: Second.

16 CHAIRPERSON PAPARIAN: And that would be
17 contingent on the NDFE going through.

18 There's been a motion and a second.

19 Secretary, call the roll.

20 SECRETARY KUMPULAINIEN: Jones?

21 COMMITTEE MEMBER JONES: Aye.

22 SECRETARY KUMPULAINIEN: Peace?

23 COMMITTEE MEMBER PEACE: Aye.

24 SECRETARY KUMPULAINIEN: Paparian?

25 CHAIRPERSON PAPARIAN: Aye.

1 Okay. So, Mark, that would be on consent if the
2 other's on consent. If the other's not on consent, this
3 shouldn't be on consent.

4 Okay. Next.

5 And thank you -- the folks from Santa Barbara,
6 thank you for coming up. Sorry that we didn't take more
7 time to hear from you. But we always appreciate you
8 joining us.

9 Thanks.

10 MR. de BIE: Okay. The next two items are very
11 much related, Item 24 and 25, Agenda Item C and D. So
12 what staff would like to do is to sort of combine them
13 into one presentation. It will require two separate votes
14 on the resolutions. But Jon Whitehill will make the
15 presentation for both of these items.

16 And I'll ask John to read the titles into the
17 record accordingly.

18 MR. WHITEHILL: Good afternoon, Board members.

19 As Mark said, I'll be presenting the next two
20 items, C and D. They're for the revision of the Solid
21 Waste Facility Permits for the landfill and material
22 recovery facility in western Placer County.

23 Both permits are being revised concurrently
24 because of the integrated nature of these operations and
25 also the proposed changes. For instance, both facilities

1 are owned and operated by the Western Placer Waste
2 Management Authority. Both permits are being revised to
3 reflect an increase in tonnage and diversion activities at
4 the MRF. The facilities are adjacent. Both are located
5 at the corner of Athens Road and Fiddymment Road in an
6 unincorporated area between the cities of Roseville and
7 Lincoln. Adjacent land use for both sites includes, in
8 addition to a one-mile buffer, zoning for agricultural and
9 light industrial uses.

10 The nearest residence is located 1,200 feet from
11 the MRF and 2,000 feet from the landfill on Western Placer
12 Waste Management Authority Property.

13 The next nearest residences are approximately two
14 miles to the west.

15 Both sites will share the same improved entrance
16 facilities, which I'll go into more detail later. The
17 boundaries of the MRF will expand and, therefore, the
18 boundaries of the landfill will contract by about the same
19 acreage in the northwest corner of the landfill where the
20 MRF is located.

21 Also residual from the MRF is transferred
22 directly to the adjacent landfill each day. And both
23 permit revisions are supported by the same EIR, which
24 describes the proposed changes at both facilities, with
25 the exception of a notice of exemption was -- which was in

1 for another very minor change.

2 The first item, Item C, is consideration of a
3 revised Full Solid Waste Facility Permit for the Western
4 Regional Sanitary Landfill in Placer County.

5 The Board last concurred in a revised permit for
6 this facility on November 19th, 2002, for major changes to
7 this height, depth, capacity, and the estimated closure
8 date of the landfill.

9 The major changes allowed by this proposed
10 revised permit include:

11 The landfill's permitted tonnage will increase
12 from 1,200 tons per day to 1,900 tons per day.

13 The entrance road is being realigned to
14 accommodate the new public drop-off area at the adjacent
15 MRF and also to allow more vehicle queuing at the gate.

16 The estimated closure date for the landfill is
17 changing from 2052 to 2036.

18 The permitted landfill facility boundary is being
19 reduced to accommodate the adjacent MRF expansion without
20 reducing the disposal footprint at the landfill.

21 Five point six acres of the landfill's permitted
22 area will be used by the MRF for storage and processing
23 activities.

24 The permitted traffic, capacity, height, and
25 disposal footprint at the landfill will not change.

1 Earlier this year, during the beginning of the
2 permit process, gas probe 6 began to show elevated levels
3 of landfill gas at the southwest boundary of the facility.
4 Four months of violations were noted including the
5 pre-permit inspection on July 2nd. During that inspection
6 we observed that the operator was extending their land --
7 their perimeter landfill gas extraction system to take
8 care of the problem. And they have since finished
9 implementing their approved gas remediation plan.

10 Board and LEA staff confirmed the success of this
11 plan during a follow-up pre-permit inspection on July
12 29th. During that inspection we only found landfill gas
13 in the parts-per-million range.

14 Board staff have determined that all of the
15 requirements for the proposed permit have now been
16 fulfilled.

17 And, in conclusion, staff recommend that the
18 Board adopt Resolution No 2003-407, concurring with the
19 issuance of Solid Waste Facility Permit No. 34-AA-0210.

20 This concludes staff's presentation. The LEA is
21 here to answer questions. Also a representative of the
22 operator and also the operator's consultant is here to
23 answer questions. And I'd also be happy to answer any
24 questions you might have.

25 CHAIRPERSON PAPARIAN: Let me just ask a quick

1 one.

2 There's a reference in the agenda item that there
3 was a community meeting held on May 8th. I'm just curious
4 what happened. Is there still concern about these
5 proposals from the community? Was there no concern
6 expressed?

7 MR. WHITEHILL: I don't believe so. But I think
8 the operator can probably answer with more details. They
9 were at the actual meeting and can tell you who was there
10 and what, if any, concerns were raised during that
11 meeting.

12 MR. DICKINSEN: Good afternoon. Will Dickinsen
13 with the Western Placer Waste Management Authority.

14 The May 8th meeting was simply the certification
15 meeting. There were -- as I recall, no one participated
16 from the public and there was no public testimony or
17 concern.

18 CHAIRPERSON PAPARIAN: Okay. So in terms of the
19 proposals before us, has there been any public concern
20 raised? The ones before us today.

21 MR. DICKINSEN: No, not that I recall. We have
22 had ongoing litigation, as you may be aware. And it's
23 possible that we got a letter in the file from the
24 litigants. But I don't remember anything -- I don't
25 remember anything throughout the entire process, and

1 definitely they did not comment at the certification
2 hearing.

3 CHAIRPERSON PAPARIAN: Okay. Thank you.

4 Any other questions, members?

5 Mr. Jones.

6 COMMITTEE MEMBER JONES: The litigants are the
7 developers, Stanford Ranch -- Placer Ranch are the
8 litigants. It's not a citizens group, just for the
9 record.

10 I want to move adoption of Resolutions -- they
11 take separate votes -- so 2003-407 revised, consideration
12 of a revised Full Solid Waste Facility Permit (Disposal
13 Facility) for the Western Regional Sanitary Landfill in
14 Placer County.

15 COMMITTEE MEMBER PEACE: Second.

16 CHAIRPERSON PAPARIAN: Okay. There's been a
17 motion and a second.

18 Secretary, call the roll.

19 SECRETARY KUMPULAINIEN: Jones?

20 COMMITTEE MEMBER JONES: Aye.

21 SECRETARY KUMPULAINIEN: Peace?

22 COMMITTEE MEMBER PEACE: Aye.

23 SECRETARY KUMPULAINIEN: Paparian?

24 CHAIRPERSON PAPARIAN: Aye.

25 COMMITTEE MEMBER JONES: And, Mr. Chair, I'd like

1 to move adoption of Resolution 2003-408, consideration of
2 a revised Full Solid Waste Facility Permit
3 (Transfer/Processing/Compostable Material Handling
4 Facility) for the Western Placer Waste Management
5 Authority Material Recovery Facility in Placer County.

6 COMMITTEE MEMBER PEACE: Second.

7 CHAIRPERSON PAPARIAN: Okay. There's been a
8 motion and a second on that resolution.

9 Secretary, call the roll.

10 SECRETARY KUMPULAINIEN: Jones?

11 COMMITTEE MEMBER JONES: Aye.

12 SECRETARY KUMPULAINIEN: Peace?

13 COMMITTEE MEMBER PEACE: Aye.

14 SECRETARY KUMPULAINIEN: Paparian?

15 CHAIRPERSON PAPARIAN: Aye.

16 So those two items I think are candidates for
17 consent.

18 MR. de BIE: Okay. Then I believe that brings us
19 to Item 26, which is Committee Agenda Item E, which is the
20 discussion and request for rulemaking direction on
21 noticing revisions to the proposed regulations for revised
22 Alternative Daily Cover Regulatory Requirements for an
23 additional comment period.

24 And Reinhold Hohlwein will make the presentation.

25 (Thereupon an overhead presentation was

1 presented as follows.)

2 MR. HOHLWEIN: Good afternoon, Committee members.

3 Today's item is a request for direction to
4 initiate an additional 15-day comment period on the
5 proposed revised Alternative Daily Cover Regulations
6 Package. Staff is now ready with an updated package for
7 your consideration.

8 As you know, an initial 60-day comment period was
9 provided as part of the rulemaking in order for all
10 concerned parties to consider the initial draft of the
11 regulations and then provide comments to the Board.

12 Appropriate comments have been incorporated into
13 the updated proposed regulations, which are contained in
14 the attachment to this item, and have been made available
15 on the Board's website.

16 We did receive numerous written comments from a
17 variety of interested parties, including the solid waste
18 industry, the composting industry, LEAs and activist
19 organizations. Roughly 30 comments were submitted. And
20 as noted in last month's public hearing, most of those
21 will likely receive written responses as part of the final
22 rulemaking process.

23 A quick summary of the new language includes:

24 Changing the generic term "beneficial use" to
25 read "beneficial reuse."

1 Addressing the LEA's primary concern regarding
2 not increasing their regulatory obligations outside the
3 scope of protecting public health and the environment and
4 by ensuring that issues regarding possible overuse of ADC
5 be investigated by the CIWMB.

6 Clarifying the ability for landfill operators to
7 have maximum flexibility with regard to the application
8 and tracking of ADC and beneficial reuse materials.

9 Modifying the definition regarding types of
10 sludge.

11 Including a requirement that operators use soil a
12 minimum of once a month so that the entitlements to use
13 ADC were not open-ended until the playing field for
14 landfill operators was leveled.

15 Including a requirement -- or identifying that
16 ADC materials that already meet the grain-size
17 specification upon receipt at a landfill need not be
18 further processed.

19 Ensuring that the Board will be responsible for
20 follow-up on any allegations of overuse of ADC materials
21 and any additional responsibilities needed to satisfy the
22 BOE regarding payment of appropriate disposal fees.

23 Clarifying that all types of ADC must still be
24 approved by EAs in writing prior to their use at any
25 landfill.

1 Noting that the CIWMB will provide technical
2 assistance to LEAs in cases where the grain-size
3 specification may be in dispute.

4 And rewording language regarding record keeping
5 to allow landfill operators to estimate quantities of
6 waste-derived materials that will be used for ADC or
7 beneficial reuse rather than requiring the operator to
8 predict maximum amounts that will be used at the facility.

9 Recently we discovered a minor typo on page 9
10 where "weighed" was misspelled. And I apologize.

11 We could take a look at the highlights of the
12 proposed changes in a slide presentation on the screen.
13 If there are any questions or concerns from the members of
14 the audience, after the presentation staff will be happy
15 to address those, as well as any questions or concerns
16 from yourselves.

17 --o0o--

18 MR. HOHLWEIN: So the changes in language are
19 reflected in blue. And the first one is a change from
20 "beneficial use" to "beneficial reuse."

21 --o0o--

22 MR. HOHLWEIN: The second is that there was some
23 concern that if waste-derived materials already met the
24 specification size, why would it be appropriate to
25 rehandle and rescreen and reprocess that material? So we

1 tried to address that. So that if it already meets those
2 specifications, it need not happen twice or it would be
3 adequate upon receipt.

4 --o0o--

5 MR. HOHLWEIN: We slightly broadened the
6 definition of sludge on noting that water treatment sludge
7 is also a type of sludge that will be recognized by the
8 regulations.

9 --o0o--

10 MR. HOHLWEIN: There's some confusion out there,
11 especially with some operators, that if ADC is preapproved
12 relatively to demonstration projects, that they can go
13 ahead and use those ADCs. But in fact LEAs must approve
14 those first. And so we wanted to put that in the language
15 to make that clear.

16 --o0o--

17 MR. HOHLWEIN: This is just a reiteration of the
18 first change, which is that if green material comes in and
19 already meets the specifications, it need not be
20 reprocessed, which particularly applies to leaves and
21 smaller materials like that.

22 --o0o--

23 MR. HOHLWEIN: There was an inclusion of a new
24 material which would make the preapproved list, which
25 would be the spray-on cementitious products which is kind

1 of a spray-on, blow-on type of material that sets up.
2 It's very thin. But it does provide adequate protection.
3 The demos have been done on that, and people find that to
4 be an adequate ADC.

5 --o0o--

6 MR. HOHLWEIN: There have been a lot of questions
7 about the specifications in the regulations. The new
8 language will make it easier for the EAs to request
9 assistance if they find difficulty in assessing whether
10 these specifications are being met by the various
11 materials that are being used, usually C&D and green waste
12 being the problematic materials.

13 --o0o--

14 MR. HOHLWEIN: There have been some changes to
15 how the record keeping and the RSI will be handled. The
16 green font represents language that will be struck, and
17 the blue again is language that will be inserted. So that
18 we've tried to make an adjustment to make it easier for
19 operators to estimate what they're going to be doing
20 instead of being required to know exactly what they're
21 going to be using.

22 --o0o--

23 MR. HOHLWEIN: This is a big one as far as LEA
24 responsibilities. The LEAs may make a determination that
25 there was some overuse of ADC. But they'll be referring

1 that to the Board, and then we'll be making some
2 evaluations internally before moving that forward to the
3 BOE. And the EAs are left out of this loop, which is
4 something that they requested, that they did not want to
5 be involved in making these assessments especially since
6 they consider diversion requirements as well as
7 operational issues.

8 --o0o--

9 MR. HOHLWEIN: This is more clarification on how
10 operators are going to be able to track the material that
11 they're using both for ADC and for beneficial reuse
12 purposes without being stuck estimating maximums that they
13 might be able to use. It gives more flexibility to the
14 operators. We hope that addresses that question.

15 --o0o--

16 MR. HOHLWEIN: And that continues in this slide,
17 which again is about estimated range of tons instead of
18 maximums.

19 --o0o--

20 MR. HOHLWEIN: And, finally, we have another
21 insertion of language for your consideration, which is to
22 level the playing field with regard to the covering of
23 landfills with soil, because there is not currently a
24 limit on the amount of days that a person -- or an
25 operator could use ADC. Landfills that are closed once a

1 week are required to place soil every week. Landfills
2 that are open seven days a week can go on indefinitely
3 without applying soil. And we've seen some problems with
4 that in the field. And we can discuss that for a moment.

5 Highlights of some of these field observations
6 are again that it's not a level playing field because, as
7 in 20690 describes as the language is today, operators are
8 required to cover with soil if they're not open every day,
9 if they close once a week for more than 24 hours.

10 There have been observed problems with other
11 state minimum standards such as excessive litter and
12 significant odors at landfills that do not regularly apply
13 soil as daily cover. So in other words, if you never
14 cover it, the litter does begin to build up and it has
15 been observed to smell more.

16 There are variations to infiltration and moisture
17 relative to types of ADC, such as shredded tires, which
18 does not prevent infiltration of moisture in a way that
19 other materials do.

20 And even within such types of ADC there are other
21 sub-breakdowns, such as green waste can vary from wood
22 chips on the dry end to moist leaves and lawn clippings on
23 the wet end. And so there is some reason to believe that
24 they don't act the same relative to preventing moisture
25 infiltration.

1 The constant placement of ADC makes the
2 definition of daily cells difficult to assess for
3 compliance, especially with numerical values in the
4 permit. If there is a numerical value that says the
5 working phase can only be so big, it's very difficult to
6 tell if it's always ADC.

7 The use of soil once a month would demonstrate
8 the ability of the operator to use soil as cover as they
9 would be required to if they ran out of ADC or
10 waste-derived materials or if there were an imminent
11 threat to public health and safety or the environment. So
12 that shows that operators are prepared to cover with soil
13 as needed on an ongoing basis. And the proposed frequency
14 is in line with monthly inspections as conducted by the
15 EA.

16 Staff is looking to the Committee for your
17 direction and conversation about this as to whether it's
18 valid and whether it's appropriate to have an entitlement
19 to landfills that are open seven days a week to use an ADC
20 virtually indefinitely.

21 With that, we're done with the slides. We're
22 open for any discussion and any testimony by the public.

23 CHAIRPERSON PAPARIAN: We do have a number of
24 people who wish to testify.

25 Are there any questions before we hear the

1 testimony?

2 Mrs. Peace.

3 COMMITTEE MEMBER PEACE: Well, I just had a
4 question on -- I guess it's page 26 line 10. It says,
5 "Waste-derived materials used as alternative daily cover
6 shall be restricted to quantities no more than necessary
7 to meet the performance requirements." At the end of that
8 paragraph it says, "EA shall not be responsible for making
9 such determinations."

10 So they're not going to be responsible for making
11 a determination if they use too much? Or does that mean
12 they're not making the determination on how much they owe
13 in disposal fees, or both?

14 MR. HOHLWEIN: I'd say it's both.

15 COMMITTEE MEMBER PEACE: And why is it that the
16 EAs don't want to be responsible for --

17 MR. de BIE: What we're trying to do with that
18 language is make a distinction. It is the obligation of
19 the EA during their inspections to determine whether the
20 site is complying with the state minimum standards. Part
21 of that is maximum or minimum depths and processing and
22 that sort of thing. That's their job, to do that.

23 Now, if they go out and assess that indeed
24 they're putting on too much material, they will report
25 that in their inspection report.

1 Board staff would then be responsible to address
2 that issue relative to overuse and the need for
3 potentially adjusting reporting requirements and
4 potentially fees.

5 So it won't be the EA's job to follow up with BOE
6 to say, "Oh, I've determined that they're doing overuse.
7 And now come and charge them more for that." It will be
8 information passed on to the Board, and then the Board
9 will take on that responsibility to work with the
10 jurisdictions and work with BOE relative to that issue.

11 COMMITTEE MEMBER PEACE: So they will still be
12 responsible for reporting it? If they think there's an
13 overuse, they still have to report --

14 MR. de BIE: They have to assess the state
15 minimum standard and evaluate whether they're complying
16 with that or not. And if it's an issue of putting on too
17 much material, that is out of compliance with the state
18 minimum standard, they'll need to report that. And we're
19 just highlighting the fact that it's not their job then to
20 work with these other entities, you know, relative to the
21 reporting or fee.

22 COMMITTEE MEMBER PEACE: Okay. Thank you.

23 CHAIRPERSON PAPARIAN: Just as a -- I know Mr.
24 Jones has a comment also. Just as a follow-up to that, if
25 somebody is in violation of these regulations, it seems

1 like the worst that's going to happen to them is that
2 they'll have to pay the BOE fee that they should have paid
3 to begin with. I'm wondering if there are penalties
4 anywhere else if -- you know, to serve as a deterrent
5 towards violating these regulations.

6 MR. de BIE: We aren't highlighting any specific
7 penalties. And we don't do that in any other area of the
8 regulations, state minimum standards operating design. It
9 would -- wholesale would come under, you know, the LEA's
10 enforcement authority, if they find a situation of
11 noncompliance, to take appropriate enforcement action to
12 bring them back into compliance.

13 So if leveling -- putting on a penalty on the
14 operator in order to gain compliance is what they need to
15 do, then they'll need to follow their enforcement program
16 plan and go through those steps.

17 But, as I think the Committee's aware, that the
18 EAs are able to bring issues to the attention of the
19 operator and have that situation corrected without the
20 need to go through that step of enforcement and penalties,
21 as the current law does require, you know, the operator to
22 be noticed of issues prior to, you know, leveling any
23 penalties. And that's consistent with statute.

24 CHAIRPERSON PAPARIAN: What kind of struck me in
25 reading these regulations is they're pretty specific, and

1 you ought to know whether you're in compliance or not in
2 compliance most of the time if you understand these
3 regulations. So that if somebody was not in compliance,
4 you know, it seems like it should be pretty clear that
5 they're skirting the law or, you know, really going beyond
6 the boundaries of the regulations. And maybe in that case
7 it might be appropriate to have some stiffer penalties
8 than just the BOE fee.

9 I just throw that out there as a comment. I'm
10 not sure --

11 MR. de BIE: You know, we'll look to Legal. But,
12 you know, I think that's something we can certainly
13 explore. It's something that's a bit different in that,
14 you know, we put in -- and I'm viewing it as sort of a
15 shortcut to, you know, some penalty or fee, because the
16 way the statute and the regs have established it, you
17 know, there's a lot of process involved with getting to
18 the point where you can level a penalty. But maybe I'll
19 look to Elliot to see if he has a take on whether sort of
20 a shortcut, you know, ticket kind of thing -- you know, I
21 go out, I find you're putting three feet of green waste
22 on. And that's an obvious violation, so, you know, pay X
23 amount as a penalty. Because I'm seeing it as a bit
24 different than the typical structure that we have.

25 ACTING CHIEF COUNSEL BLOCK: Right. We can

1 certainly look into some issues along those lines.
2 However, I don't believe in these regulations we would be
3 able to do something like that. There are sort of two
4 different issues we're dealing with. Mark has described
5 that. The language that you're seeing before you now is
6 really an attempt to make explicit in the regulations what
7 our practice has been for the last three or four years as
8 we started to come up with these issues. And it's not
9 actually really changing anything in terms of the real
10 world. If the determination is made that ADC is in fact
11 disposal as opposed to diversion, then in fact they should
12 have paid the fee, and that happens to be the case, we're
13 putting it in the regulations just to make that explicit
14 to the extent that for some reason somebody has missed
15 that in the past.

16 Separate from that, the standards we've been
17 talking about, essentially it's a state minimum standard.
18 So there's an established process in statute and the regs
19 for addressing violations of state minimum standards. And
20 so while theoretically there's a shortcut fine process in
21 statute now for violations in addition to sort of the
22 standard ones, while we can take a look at it if you'd
23 like, I think we'd have a difficult time establishing an
24 additional or a special violation or fine penalty for
25 these that would be different from any other state minimum

1 standards. But we can certainly take a look at that.

2 But at this point we're trying to just make sure
3 that it's handled the same way as any other violation of
4 state minimum standards. And then this is a separate
5 issue on top of that that's not connected with that state
6 minimum standard.

7 CHAIRPERSON PAPARIAN: Okay. So maybe we can
8 explore that a little bit more later.

9 Mr. Jones.

10 COMMITTEE MEMBER JONES: Thanks, Mr. Chair. Just
11 a couple of questions.

12 To follow up on what this conversation has been,
13 I think under AB 59 you can do three fines of \$5,000 for
14 state minimum standards.

15 But that begs the question, if the LEAs don't
16 want to take responsibility for this, who gets the five
17 grand? Doesn't the local LEA get the fine? Doesn't it
18 stay local?

19 ACTING CHIEF COUNSEL BLOCK: Short answer is yes.
20 I mean that's the reason why I was trying to distinguish
21 between sort of two different things. That the language
22 that you're seeing before you is really a separate issue
23 that flows from whether or not there has been overuse and
24 it's related to the BOE fee and then -- well, it's related
25 to the BOE fee.

1 And that's what the LEAs are not wanting to be
2 responsible for following through on having to worry about
3 whether a fee was due for that overuse or not. But they
4 are responsible for identifying violations of state
5 minimum standards. And that would be what we'd be moving
6 forward through that process. So there's sort of a
7 dichotomy that's here.

8 COMMITTEE MEMBER JONES: All right. And then if
9 somebody -- if another hauler or a citizen complained to
10 an LEA what they thought was an overuse of ADC -- and I
11 think we've got to put this into a perspective. There
12 were four landfills in the State of California out of 165
13 that were actually in violation of that standard. So it's
14 not like it's real rampant. But if somebody did see that,
15 the LEA would have a responsibility to go out and check,
16 I'm assuming, because it's a state minimum standard,
17 right?

18 So they're not absolved of that obligation
19 because of that language, are they?

20 MR. de BIE: No. And maybe it would help to give
21 a little bit of an example.

22 In the green material ADC there are -- there's a
23 limit in maximum amount of green waste that can be placed
24 on the working face of 12 inches.

25 If the LEA became aware of a situation where the

1 operator was placing more than 12 inches, you know, 24
2 inches, then they would be obligated to find them out of
3 compliance with that standard. Well, so that additional
4 12 inches is basically illegal cover, or disposal, and so
5 it's an overuse issue. We're just staying at that point
6 the LEA, you know, notes the violation, notes the
7 information. When the Board gets that information, either
8 from the LEA or whatever source, we're obligating
9 ourselves to go and follow up with what that means
10 relative to reporting and the fee. It won't be the LEA's
11 job to follow up on that. But it is their job to assess
12 the on-site situation relative to how cover's being used.

13 COMMITTEE MEMBER JONES: Okay. And then on the
14 cementitious materials, it almost sounded to me like you
15 were giving them a blanket approval. And yet all of these
16 different products have different characteristics. And I
17 know that -- I don't know how much it has improved over
18 the years, but I know we used to test this stuff all the
19 time. Some worked, some didn't.

20 Are you giving this a blanket approval?

21 MR. HOHLWEIN: I'm not aware that there are
22 multiple types of this. We were only speaking with people
23 that were promoting a single type of -- a single product.
24 And I was advising them that we couldn't endorse a single
25 product. We try to match the language up with the product

1 that they had and make sure that that made sense.

2 I'm not aware that there are multiple competing
3 products and that we were giving a blank check to that.

4 And as far as the requirements that go in, are
5 you seeking something that would define further what it is
6 that they're allowed to do or is it -- how is it that --

7 BOARD MEMBER JONES: I mean it just -- it
8 didn't -- if you're just identifying a single product,
9 then that's fine. But if you're saying those types of
10 products are all in, that kind of precludes testing and --
11 it may preclude the testing and it may send a false sense
12 of security to an awful lot of landfill operators that
13 these type -- and, you know, remember, I don't know what
14 the product is that has been talking to you, or the
15 product type. But don't be surprised if there aren't
16 other types that are very similar that would like to make
17 sure that they were in that same category without the, you
18 know, benefit of testing.

19 So I just think we need to be careful about that.
20 It doesn't make sense to me.

21 MR. de BIE: Mr. Jones, I know -- and Scott
22 Walker has stepped up. And Scott is more aware than most
23 about the various products that have been used in
24 demonstrations throughout the state. So maybe he could
25 let you know about, you know, the various projects that

1 we've seen and maybe speak to the issue of this generic
2 approval over specific products.

3 MR. WALKER: Scott Walker, Permitting and
4 Enforcement Division.

5 I think the key point to raise here is that the
6 category of spray-on cementitious products -- regardless
7 of what the product is, there is a -- you know, pretty
8 prescriptive performance requirements that that product's
9 got to meet regardless of what the product is.

10 So the current spray-on products, we have a
11 couple that have actually performed acceptably. If some
12 other equivalent product comes up, they're going to still
13 have to meet all the other requirements of ADC. If they
14 can't, then they're not going to be able to use it
15 regardless of whether it's listed as a category.

16 COMMITTEE MEMBER JONES: All right. And then,
17 just lastly, the -- I had raised issues about this
18 requirement to put down dirt once a month, sort of the
19 standpoint that it seemed pretty arbitrary. I haven't
20 heard anything to convince me differently.

21 And so I'm going to kind of listen to what the
22 stakeholders have to say. You haven't -- other than the
23 fact that you want to level some playing field. The size
24 of the working face on any given month would actually
25 fulfill the requirement, right?

1 MR. HOHLWEIN: It's conceivable, yeah.

2 COMMITTEE MEMBER JONES: Well, it is conceivable.

3 So you could have a very small working face, no bigger
4 than this room -- half -- a quarter of this room, put some
5 dirt on it, put six inches of dirt on it, compact it, and
6 you fulfilled the requirement. And that's going to help
7 stabilize the landfill. That to me is an arbitrary
8 knee-jerk type recommendation from somebody to try to show
9 whatever they're going to show.

10 There's no -- I don't understand it, okay, from
11 that standpoint, because it's too easy to get around.

12 So you're going to make a requirement that's not
13 going to have a benefit to the environment, basically.

14 So I'm waiting to hear from the stakeholders, I'm
15 waiting to hear from you guys. But, you know, right now
16 there's nothing that precludes a working face for part of
17 a day to be -- the size of this dais, and you put dirt on
18 it and you fulfilled the requirement. That is not
19 something that I can endorse in a set of regs that -- you
20 know what I'm saying?

21 MR. HOHLWEIN: I do. We've struggled with this.
22 And we appreciate the input, and in fact we're looking for
23 input on this, because in the field we've struggled with
24 this. We've struggled with people saying, "Well, where
25 does it say that I have to do this?" And we haven't been

1 able to cite that. So that's one of the reasons that
2 we're looking for this.

3 And the arbitrariness of the time line is
4 something we've also struggled with. What would work?
5 What would be appropriate? What is going too far? And
6 then what is it that landfills do over time that might be
7 effective by any time line like this? Two of the things
8 that I've seen personally are odor and litters -- or odors
9 and litter have been affected and magnified by the fact
10 that things weren't covered for that long. So I have seen
11 that personally.

12 And I've also had difficulty deflecting operators
13 with their questions about why we should be doing the
14 cover for them on, you know -- or why we should be
15 insisting on soil cover? If they are only going to be
16 closed for a day, what's the harm, they say, when the
17 material will be reapplied on Monday? So we've struggled
18 with that, and that's one of the reasons we're asking for
19 some discussion by the Board and listening to input from
20 those that might have another opinion.

21 CHAIRPERSON PAPARIAN: Before we go to the
22 witnesses I want to follow up on one thing.

23 The spray-applied cementitious products -- in the
24 regulation draft that's like number 11 here in the list of
25 things that can be used as ADC. But it doesn't say what a

1 cementitious product is. Mr. Jones was raising the
2 question of, could someone come in and claim they have a
3 cementitious product that really doesn't perform the way
4 the product you're familiar with performs?

5 Do we need to define in some way what a
6 cementitious product is, or is it defined someplace else?

7 MR. WALKER: Scott Walker again.

8 I think that the spray-on product category for
9 the purposes of the regulation we would feel it's defined
10 sufficiently. The key thing though is that, just like we
11 already have a foam, a standard for foam, but we can't
12 name the specific product. So when a new foam comes up,
13 they can't just use it and it's acceptable. They also
14 have to meet all the other requirements. It's got to
15 control odors, vectors, litter, et cetera. And if that
16 product can't, it can't be used. So just having that
17 category doesn't mean that anything that comes up that
18 they call is going to be acceptable cover material.

19 But we find that that category is -- that term's
20 been used in other states and there's a standard suite of
21 products out there that have been marketed. And so at
22 least we feel pretty comfortable that that current
23 definition would work. And also if another new product
24 comes up and it doesn't work, well, they won't be able to
25 use it because of all the other requirements that are

1 going to apply.

2 COMMITTEE MEMBER PEACE: Excuse me. Who
3 determines if they work or not?

4 MR. WALKER: It's the EA -- the EA will determine
5 in the field and inspect. And they're required to ensure
6 that each standard that applies, not just the general
7 category standard for spray-on cementitious products, but
8 also the requirement to control odors, vectors, fire,
9 litter, nuisance, to also have contingencies and soil
10 backup for cover, all those other requirements will apply
11 and the EA will be required to enforce those for that
12 particular product also.

13 CHAIRPERSON PAPARIAN: Okay. Why don't we hear
14 from our witnesses here.

15 Don Gambelin, followed by Karen Hansen, followed
16 by Theresa Dodge.

17 MR. GAMBELIN: Good afternoon, members of the
18 Board.

19 I figured I'd start with the questions that you
20 had initially too, and that's on --

21 CHAIRPERSON PAPARIAN: Mr. Gambelin, if you could
22 identify yourself for the court reporter. And everybody
23 else who testifies, if you would do so.

24 MR. GAMBELIN: Donald Gambelin, NorCal Waste
25 Systems of San Francisco.

1 I guess I want to start where some of your
2 questions started, and that was on 20690 No. 7 where we
3 talk about the Waste Board determining if overuse occurred
4 or not.

5 I guess the big question in my mind is, how is
6 that determination made? We've gotten some feedback here
7 and there. And if I look historically on the Board's
8 activities related to this, it appears to us that the
9 overuse is actually determined retroactively through the
10 disposal reporting system as opposed to an EA in the field
11 actually giving a violation for exceeding the, say, for
12 instance, on green waste, the maximum -- or not the
13 maximum, but the average of 12 inches. If possible, we'd
14 like -- certainly like some clarification on that, that
15 if -- if the Board is going to determine that disposal
16 records need to be modified to reflect overuse as actual
17 overuse, that should be preceded by the EA actually
18 determining through a field inspection that there is too
19 much ADC being applied, as opposed to retroactively
20 through some magic of engineering calculations and
21 whatever through the disposal reporting system making a
22 determination that way. So if I could just ask that and
23 whenever that can get clarified. I don't know if you want
24 me to pause now and --

25 CHAIRPERSON PAPARIAN: I don't want to prolong

1 this hearing too long, but does staff have a quick reply
2 to that, or do you need to get back to him?

3 MR. de BIE: Maybe just a way of clarification,
4 make sure I heard the comment. It sounded like what Mr.
5 Gambelin was saying is that the Board would determine that
6 an overuse situation occurs prior to an LEA noting issues
7 with the state minimum standard. Is that the way I should
8 hear it?

9 MR. GAMBELIN: Actually, the question -- well,
10 along those lines, what seems to happen here is whether or
11 not the Board would determine if there appears to be
12 overuse, with or without the -- or, let's say, in the
13 absence of the EA actually through field inspections
14 saying that there is no overuse going on, but through some
15 magic of calculations we determine retroactively that
16 there has been, that's --

17 MR. de BIE: I don't know how we would magically
18 retroactively determine that there needs to be some facts,
19 some information that we point to to determine an overuse
20 situation. And all we're trying to do with this reg is to
21 clarify who is looking at the situation, you know, to make
22 what determination.

23 In the past the Board has been involved with
24 basically site audits where we've gone out and looked at
25 the site and looked at records and how ADC is being

1 applied at the site and, you know, sought information from
2 the operators about, you know, what their past practices
3 have been. And as Mr. Jones indicated, the majority of
4 those turned out that there were no issues. So I think
5 that's part of what we would continue to use to, you know,
6 make determinations.

7 All this reg does is say if the EA points out
8 that there is an overuse issue, they're not obligated to
9 follow through on that, again, working on the DRS and the
10 BOE. But it's a Board responsibility through their
11 involvement with DRS to follow up on that.

12 Sharon asked about the timing violation before or
13 after. You know, certainly if an EA notes a violation,
14 that may, you know, be the beginning of the Board
15 involvement. But I think through our -- if we continue
16 our audit function, working with the DRS people, it could
17 be independent of an LEA evaluation.

18 CHAIRPERSON PAPARIAN: Go ahead, Mr. Gambelin.

19 MR. GAMBELIN: Okay. Well, let me -- just to
20 follow up on that but not belabor it let me just throw
21 something on the table that we certainly would like to
22 see. And, that is, that the -- any violation of the
23 standard actually should be determined in the field
24 through site inspections and not through DRS accounting
25 exercise. That seems appropriate, and that the only way

1 to judge whether or not a performance standard was
2 actually met is when you're actually looking at it, not a
3 year or so or whatever period of time down the road when
4 you're determining through some calculations that
5 something seems funny.

6 I think this is somewhat recognized in the regs
7 itself, where there is recognition that the operator
8 should weigh incoming material, that it is going to go to
9 beneficial reuse, but does not necessarily need to weigh
10 that material again before it's actually applied. The
11 reason that that's important is that the DRS works with
12 the numbers at the gate when the material comes in. And
13 the difficulty in any ADC retroactive calculation is in
14 figuring out, okay, what did that ADC material actually
15 look like when it was applied? So what sort of moisture
16 loss was there when it was processed after it came in the
17 gate? And if we're simply looking at doing enforcement of
18 ADC and whether -- and a determination of whether or not
19 there was too much used based on tonnage records at the
20 gate when it came in before it was processed, we're making
21 a lot of assumptions to take that sort of enforcement
22 action.

23 And so if I could throw on the table that in fact
24 the violation of state minimum standard should be
25 determined only through field inspections and that

1 afterwards the Board should of course have the ability to
2 come back through and require applicable reports to be
3 revised. Let me throw that out there, and obviously
4 everybody can take --

5 MR. de BIE: That's been our process. In these
6 audits we go out and make firsthand inspections of the
7 site. And that is a key factor in our work. So, yes, it
8 will continue that way. We don't just look at records and
9 reporting. We look at everything. And, you know,
10 observations in the field is a big part of that. So that,
11 you know, as far as I can tell, will continue.

12 You know, I think part of this discussion maybe
13 needs to be with the disposal reporting regulations and
14 not necessarily in these regulations. Again, all we're
15 indicating is where's the line of separation in terms of
16 what the EA's responsible for and what they're not
17 responsible for. But it doesn't attempt to lay out a
18 process for the Board to make determinations relative to
19 overuse. It just points out who's responsible for doing
20 that.

21 CHAIRPERSON PAPARIAN: Mr. Jones.

22 COMMITTEE MEMBER JONES: Thank you, Mr. Chair.

23 Mark, if an EA spots -- let's say they're walking
24 along and they fall into a huge mountain of ADC that has
25 been used as cover, which is, you know, what the pictures

1 showed when we did have a violation, was our staff up to
2 their waist in ADC, which triggered those having to go
3 back and calculate what had to be done. One of the four
4 in the state that actually did abuse that.

5 If the EA were to see something like that, we've
6 got to make it so that they -- it shouldn't be that you've
7 got to wait until somebody on your staff sees a copy of an
8 inspection report. We ought to trigger that there's a
9 phone call. And I'm not talking, you know, an inch above,
10 because we have some LEAs that when they say a 13-inch
11 piece of tire shred, write a violation. I'm talking, you
12 know, something normal, in excess, that we're notified
13 right away or that you guys are notified so that people
14 can start watching that closely so that we get away from
15 what Mr. Gambelin's worried about.

16 But I think that would probably make sense, you
17 know, that trigger, rather than waiting for a --

18 CHAIRPERSON PAPARIAN: One concern I have about,
19 you know, going in the sort of strict direction that Mr.
20 Gambelin is suggesting is that once you have covered up
21 your ADC with more waste the next day, it seems like
22 you're off the hook. That if you were only going to do
23 what the LEA saw, and the LEA's going out there once a
24 month or, you know, twice a month, whatever frequency they
25 choose to go there, they could only write up a violation

1 for one day's worth of stuff, and that seems like it could
2 be a problem. If someone is taking in 10 tons a day of
3 green waste and on the day the LEA goes there that LEA
4 notes that only 5 tons is what's necessary for ADC and the
5 rest is excessive, and the records show that 10 tons a day
6 had been coming in, you know, the LEA ought to be able to
7 go back and suggest that there might have been a problem
8 with what was coming in previously.

9 MR. GAMBELIN: I guess the concern I have is once
10 it's covered up, then it's also difficult for the operator
11 to defend their use of ADC. And especially if they're
12 defending their use where it's again based on a
13 calculation with numerous assumptions built into it and
14 those assumptions have certain sensitivities that may sway
15 one way or another. Again, I just raise the point that
16 we'd certainly prefer that it would be through field
17 inspections and not through backroom calculations of some
18 sort after the fact.

19 The other question I had of staff -- and I guess
20 I got a response that -- it concerns me along these lines
21 too and, that is, that this action where the Waste Board
22 determines that there was a violation of a standard and
23 requires applicable reports to be changed, that that part
24 of the regulation is not considered an enforcement action
25 and therefore is not available to be appealed through the

1 AB 59 process. And that's the answer I got back. And we
2 certainly would like the answer to be something different,
3 that in fact this is an enforcement action and that it is
4 available to be appealed through the AB 59 process. We
5 think that's appropriate. Because in fact if you are
6 making a determination that you violated a state minimum
7 standard, it would seem that that is an enforcement action
8 and nothing other than that.

9 CHAIRPERSON PAPARIAN: Do you want to respond to
10 that, Mr. Block?

11 ACTING CHIEF COUNSEL BLOCK: Sure.

12 Similar to what we were talking about before,
13 that there's sort of two different things we're talking
14 about. And there is no question that if an LEA or the
15 Board, let's say, if it was during our state inspection,
16 identified a violation of overuse of ADC and then that
17 proceeded to turn into an enforcement action, that would
18 be appealable through the AB 59 process.

19 The issue of a long-term situation where there
20 may or may not have been misreporting both through BOE and
21 then DRS is not subject to the AB 59 process. It goes
22 through the BOE process. In fact, that's how those have
23 been handled for years. BOE goes out and does their own
24 audit. There is an appeal process through BOE if an
25 operator wants to challenge. And that's the process that

1 applies. But the BOE issues are not -- they're not state
2 minimum standard violations that are being enforced, if
3 you will.

4 So there is an appeal process. It's just not the
5 AB 59 appeal process.

6 MR. GAMBELIN: Okay. Thank you. I would hope
7 that, because of the premise of the disposal recording
8 change is based on a determination that there was a
9 violation of the standard, that it would be appealable.

10 Under 2690(b) specific requirements, this is a
11 new section. And it says that all types of ADC, even
12 though they are specified and approved in regulation, must
13 still be approved by the EA in writing prior. That leaves
14 me with the impression that the EA can actually determine
15 that they can't be used at a landfill even though they're
16 approved in regulation. Is that the case? And upon which
17 criteria would the EA be basing that?

18 MR. de BIE: That's the situation. And they
19 would look at whatever site-specific issues lead them to
20 believe that that particular kind of ADC would not be able
21 to meet the performance criteria for ADC.

22 An example might be a very windy location and
23 very strong winds on a continuous basis day after day
24 would not be one that would be able to potentially use
25 tarps in that kind of situation. Even though tarps are

1 listed as an ADC that does not require demonstration, the
2 LEA would be obligated to evaluate the use of tarps at a
3 very windy landfill and make a determination whether it
4 could perform its function as an ADC at that site. So the
5 evaluation criteria is whether or not it could be found to
6 perform as ADC given that particular location and the
7 site-specific conditions relative.

8 MR. GAMBELIN: And, finally, thank you, Board
9 Member Jones for raising the issue of the once-a-month
10 application of soil. I honestly find it arbitrary too. I
11 can't think of a reason that it would make sense,
12 particularly when you do have -- in other parts of the
13 regulations you have, for instance, a processed green
14 material can't be exposed for more than 21 days. So you
15 do know that areas of ADC use -- or green waste used as
16 ADC are going to be covered with soil periodically.
17 Landfills also do have intermediate soil cover
18 requirements where this cannot be left exposed long term.
19 And any thought of a level playing field just -- I can't
20 figure that one out. So perhaps we can get some more
21 information to try and understand that better.

22 I do want to thank staff though for hearing our
23 comments the last time was up and for making some really
24 good changes to the regulations regarding the definition
25 of "reuse" and also understanding that landfill

1 engineers -- the difficulties with landfill engineering
2 and trying to estimate the volumes that will be used, this
3 certainly is not a manufacturing process where you know
4 your exact inputs and exact outputs on a daily basis. So
5 thanks for recognizing that.

6 Thank you.

7 CHAIRPERSON PAPARIAN: Thank you.

8 Karen Hansen, Midwest Industrial Supply.

9 And as Ms. Hansen is coming up -- I don't know if
10 we have to ex parte this or not. But we were provided an
11 informational brochure about -- all the members up here
12 were provided an informational brochure about a product
13 called Soil Sement S-e-m-e-n-t, which presumably is
14 impacted in some way by these regulations.

15 MS. HANSEN: Yeah, hi. So I'm Karen Hansen.

16 And I believe I left a message for Mr. --
17 Reinhard, but I hadn't gotten a call from you yet. So
18 there are definitely other companies that have
19 cementitious spray-ons. We are a soils and engineering
20 firm that has been together for 28 years, and we supplied
21 dust control and soil stabilization to the recent conflict
22 in Iraq. I'm just taking over a position in California
23 right now.

24 I'm basically just here to introduce myself, to
25 say that there are other products out there, and that we

1 are trying to get information on how to work with you.

2 And that's as easy as that.

3 Do you have any questions for me?

4 CHAIRPERSON PAPARIAN: Do you have any questions?

5 Thank you very much. And I think you'll note a
6 number of the representatives of the operators are here,
7 who you might want to make contact as well.

8 Thank you.

9 Theresa Dodge, followed by Rick Lymp, followed by
10 Larry Sweetser.

11 MS. DODGE: Theresa Dodge, L.A. County Sanitation
12 Districts.

13 I'd like to say we support these regs moving
14 forward for a 15-day comment. In particular we want to
15 thank the staff for making the modification,
16 accommodating, giving operators more flexibility in how
17 they calculate or estimate their proposed beneficial ADC
18 use in the RDSI.

19 And I'd like to echo the concerns of NorCal.
20 We're very -- we need some clarification on how the DRS
21 and the P&E -- how enforcement will come down on sites.
22 And if any calculations are used in any way, we believe
23 those need to be discussed publicly, because -- these
24 materials are not like soil. They aren't known
25 engineering characteristics. They're highly flexible on a

1 high -- they're highly flexible, but also highly variable
2 on a day-to-day basis based on process, incoming
3 feedstock. And assumptions make a huge difference in what
4 you calculate your use as. And so that's why -- we
5 appreciate the change in the RDSI. And we would want to
6 discuss any calculations that we use for enforcement well
7 in advance to them being used. So we're interested in
8 continuing conversations with staff on that topic.

9 Questions?

10 CHAIRPERSON PAPARIAN: No, I'm seeing the nod
11 from staff that they're anxious to continue those
12 conversations.

13 Okay, anything -- okay, thank you.

14 Rick Lymp, followed by Larry Sweetser, followed
15 by Chuck White.

16 MR. LYMP: Good afternoon. My name is Rick Lymp.
17 I'm with Right 2 Know.

18 On June 19th, I sent a letter petitioning a
19 repeal of these regulations. You received it on June
20 23rd. I've done this under the Government Code Section
21 11340.0 -- excuse me -- .6 of the Administrative
22 Procedures Act, Section 11340.7.

23 ACTING CHIEF COUNSEL BLOCK: Pardon me just a
24 moment.

25 This is the ADC regs. The next item is the C&D

1 regs.

2 MR. LYMP: And this is the ADC regs. You
3 received a letter regarding a repeal of ADC regs.

4 ACTING CHIEF COUNSEL BLOCK: No, what we received
5 was regarding the C&D regs.

6 MR. LYMP: No. I received the return receipt
7 back. If you'd like a copy of it, I'll give it to you
8 now.

9 ACTING CHIEF COUNSEL BLOCK: Okay. Just wanted
10 to clarify. And I apologize.

11 MR. LYMP: Regardless, with the other petition,
12 the same applies. According to 11340.7 the agency is
13 responsible to notify me in writing that they received it
14 and then respond in 30 days, not 35 days or 36 days.

15 Neither of these things regarding alternate daily
16 cover has been accomplished or done, in violation of the
17 Administrative Procedures Act, and I'd like to know why.

18 CHAIRPERSON PAPARIAN: We'll have to turn to our
19 counsel.

20 ACTING CHIEF COUNSEL BLOCK: Sure. I guess I'm a
21 little confused. We did receive the petition. It was
22 regarding the construction and demolition and inert debris
23 regs. We did respond to those within 30 days. And if you
24 haven't gotten a copy yet for some reason, although I'm
25 not sure why, we can certainly make sure you get one

1 today.

2 MR. LYMP: I received one on the C&D regs. I
3 have not received one on ADC regs.

4 ACTING CHIEF COUNSEL BLOCK: Did you send two
5 petitions?

6 MR. LYMP: Yes, I sent it to Mr. Leary, and I
7 have the return receipt. I can make a copy and fax it to
8 you if you'd like.

9 In fact, maybe I ought to let you have a chance
10 to find your own copy.

11 ACTING CHIEF COUNSEL BLOCK: Okay.

12 CHAIRPERSON PAPARIAN: Sounds like we need to
13 clarify whether we actually have that. Sounds like Mr.
14 Lym is willing to provide that if we don't have it, so
15 that --

16 MR. LYMP: I'm willing to provide it. I'd like
17 to wait a couple of days to see if they can find their own
18 copy, if you don't mind.

19 CHAIRPERSON PAPARIAN: All right. And then
20 whatever appropriate response will be taken care of.

21 MR. LYMP: And can you give me a fax number.

22 CHAIRPERSON PAPARIAN: Why don't you -- Mark,
23 maybe you can -- if you just want logistical stuff like
24 that, maybe Mark can talk to you on the side and get you
25 that.

1 MR. LYMP: Thank you very much.

2 CHAIRPERSON PAPARIAN: Okay. Thank you, Mr.
3 Lymp.

4 MR. de BIE: Mr. Paparian, just for the record --
5 Mark de Bie -- staff in Permitting and Enforcement are not
6 aware of that correspondence either. So it didn't come to
7 us.

8 CHAIRPERSON PAPARIAN: Okay. So we're going to
9 clarify whether we actually have it. And if not, Mr. Lymp
10 is going to provide it to us.

11 Mr. Larry Sweetser, followed by Chuck White,
12 followed by Mark Murray.

13 MR. SWEETSER: Good afternoon, Board members. My
14 name is Larry Sweetser on behalf of the Rural Counties
15 Environmental Services Joint Powers Authority.

16 And overall I want to thank the staff for their
17 efforts. I think as far as this packet goes overall, we
18 can live with it. I did want to raise a couple of points
19 for consideration.

20 A lot of our members do use different types of
21 ADC, everything from tarps, a few even use green waste and
22 a few other materials, and have found the regulations of
23 benefit currently.

24 One point in the packet that concerned us -- and
25 I'll be redundant on this on the C&D package -- is under

1 the RDSI section. On my copy it's page 10. It involves
2 the requirement for mandatory use of scales, or at least
3 that's the way I read it. That material accepted at the
4 landfill to be used as ADC or beneficial reuse shall be
5 weighed. And we would hope that you would allow --
6 continue to allow the process for volume conversions on
7 smaller sites. Many of our small sites do not have scales
8 and cannot afford to put one of those in there. So we'd
9 like that addition in there, if possible. I haven't -- I
10 mentioned it briefly to Reinhard today. I don't know if
11 there's any concern about that or not. But --

12 CHAIRPERSON PAPARIAN: Is there a quick response
13 on that issue, the smaller facilities without scales?

14 MR. de BIE: The regulation doesn't make a
15 distinction, but the last part of that paragraph reads,
16 "appropriate conversion factors for specific materials
17 based on industry standards are acceptable for tracking
18 the use of materials after acceptance at the gate." I
19 think what we can do is work to clarify about the
20 weight -- or no weight and conversion factors and that
21 sort of thing. What we were getting at here was that if
22 you weigh it -- if you weigh it coming in, you don't have
23 to reweigh it. So maybe what we need to do, and we'll
24 have to talk about how that works out, is if you estimated
25 based on a conversion factor, you don't have to

1 re-estimate it.

2 MR. SWEETSER: I think the intent is there.

3 CHAIRPERSON PAPARIAN: Yeah, and I would just add
4 that we want to make sure that it's written in such a way
5 that there couldn't be abuse of that section by folks who
6 do in fact have scales.

7 MR. de BIE: Yeah, that would be our concern. So
8 we may explore with Larry and others, you know, maybe a
9 small landfill exception or, you know, add some
10 flexibility based on LEA evaluations, something like that.

11 CHAIRPERSON PAPARIAN: Okay. Thank you.

12 MR. SWEETSER: Then regarding the cement-like
13 materials, one of our counties does use that. Mono County
14 has used it successfully. There are a number of limits
15 put on that use on when they can and can't use it, and Mr.
16 Walker's been very helpful with that. And we would agree
17 with him that allowing the enforcement mechanisms to take
18 the place of determining how well that material is used
19 rather than creating a new definition of what that
20 material is like. I don't think we need to go to that
21 point. I think there's sufficient protection measures.

22 Lastly, I did want to mention that we are
23 signatory to the solid waste industry letter on some of
24 the technical issues of concern. We did sign off on that
25 letter and we do agree with those concerns that were

1 raised and looking for resolution on those.

2 Our members did want me to clarify that we have
3 not entered the political or philosophical debate on ADC
4 usage, whether it is or isn't diversion. We're just
5 solely dealing with this issue on the technical merits.

6 And so thank you very much. And any questions?

7 CHAIRPERSON PAPARIAN: Nope.

8 Thank you, Mr. Sweetser.

9 Chuck White, followed by Mark Murray, followed by
10 Chuck Helget.

11 MR. WHITE: Mr. Chair, members of the Committee.
12 Chuck White representing Waste Management.

13 I just have a couple of points that I'd like to
14 make, more of clarification than anything else. We did
15 sign the joint industry letter in June and also sent a
16 separate letter in raising a couple of points.

17 A couple -- I really appreciate the Board staff's
18 response to many of the issues that were raised. I
19 believe they've been satisfactorily addressed. Two of
20 those issues are the changes that have been made on page 9
21 of the proposed regulations on the Board agenda packet.

22 One has to do -- one issue had to do with the
23 apparent possibility that you might have to weigh the
24 material multiple times. And I believe that has been
25 changed to make it clear that only you need to weigh the

1 material once when it comes in the gate. You can
2 stockpile it for a variety of purposes, for erosion
3 control, for landscaping, for ADC. When you pull it off
4 for ADC you don't have to take it back through the scale
5 again. You can use conversion factors and standard
6 industry practice to make an estimate of the material that
7 is actually pulled off of that stockpile for uses, ADC,
8 for erosion control, for landscaping. So we do appreciate
9 that change.

10 The second issue has to do with the specific
11 amount of ADC in your planning documents. And I believe
12 that's been changed to make it an estimated range. And we
13 certainly appreciated that change because it certainly
14 provides more flexibility, and it's hard to estimate too
15 far in advance.

16 A third issue that we did have some concerns
17 about, and that has to do with the language that is on
18 page 4 of the regulations, lines -- on the August
19 12th-13th version, lines 30 through 32.

20 And this is really important to us. We
21 understand it provides for alternative processing and
22 grain-size specification requirements, which may be
23 approved by the EA if the EA determines that the
24 alternative meets the performance requirements of
25 paragraphs A2 and A3. This will allow alternative

1 grain-size, alternative processing requirements subject to
2 the LEA and Board approval, which we think is appropriate
3 in those situations where we may have a particular ADC
4 material that works perfectly fine but doesn't meet the
5 exact specs.

6 However, there is some concern about what A2
7 means, which is two pages previous on page 2 of this same
8 set. And it may be just simply a point of clarification.
9 There's a new sentence that's been added. It says waste
10 materials used as ADC that already meet the grain-size
11 specifications or the appropriate -- for the appropriate
12 material need not be processed.

13 The question is: Are you referring to the
14 specific grain-size specifications in the regulations or
15 are you also including an alternative grain-size
16 specification that might be approved by the EA and the
17 Board?

18 We hope it's the latter, to include both the
19 grain-size specifications that are included in these
20 regulations or some alternative grain-size specifications.
21 And if the material coming in meets that alternative
22 grain-size specification approved by the EA, you would not
23 need to do any further processing if it otherwise met the
24 standards of the EA.

25 And so I would just like to have that clarified

1 and making sure that you're referring to both kinds of
2 grain-size specifications, those that are both contained
3 within the regulations and those that might be
4 alternatively approved by an EA.

5 A third point is the issue that's been discussed
6 briefly, and that has to do with this requirement to
7 use -- Mr. Jones raised it, discussed it -- cannot
8 continually use alternative daily cover for a period of
9 time more than one month without the application of soil
10 as daily cover over the entire active area. And I'm not
11 sure what entire active area means. Mr. Jones seemed to
12 imply it might mean the working face. But the entire
13 active area could conceivably mean something entirely
14 different.

15 Over the course of a month you may have a working
16 face here and it may progress here, it may progress over
17 here. You may have a large area of several historical
18 working faces during that month. Do you mean you have to
19 apply the cover to the entire active area that was active
20 during that one month time? Or do you mean just that one
21 working face section during that one day in that 30 day
22 period? And it raises the same concerns, does that make
23 any sense?

24 I've asked our engineering staff to give us
25 some -- do they see any rationale for covering either a

1 working face once a month or entire area of history of
2 working faces? And they are at a loss to come up with an
3 engineering reason why that would be necessary if your
4 alternative daily cover is working appropriately. And
5 they make the point that if your alternative daily cover
6 is not working appropriately, then that should be dealt
7 with on a case-by-case basis.

8 So we would ask that this newly proposed sentence
9 be stricken from the regulations, either now or after the
10 15-day comment period. But we don't believe it bears
11 any -- there's no need for it. It doesn't bear any
12 relationship to our engineering understanding of the use
13 of ADC or daily cover in general.

14 Another point is the issue that all types of ADC
15 still must be approved by the EA in writing. I guess we
16 weren't aware that we need to have EA approval in writing
17 of even ADC that is in accordance with the specifications
18 of the regulations. We have a variety of different
19 understandings with the EAs. Some are just informal
20 understandings. Some are documented in writing. Some
21 are -- and this kind of raises the issue that we're going
22 to have to go back and get letters from all of our EAs for
23 all of our landfills for all of the ADC practices we have
24 just to make sure that we're in compliance with this.

25 And I wasn't aware that there was a problem

1 previously with the previous method of acknowledging and
2 working with EAs to make sure that they agreed with the
3 use of ADC. But it sounds like we're going to need to go
4 to a more formalized approval process. Is that really
5 necessary?

6 And then, finally, a comment that you did not
7 respond to in our previous letter, and that was the
8 request for a phase-in period. I am not aware there is a
9 phase-in period yet proposed for these regs. We would
10 very much like to have at least a couple of months once
11 these regs become fully in effect to be able to make sure
12 that we've got all the -- if you do keep the requirement
13 for letters in writing from the EA approving as the
14 specific applications, that we've got a period of time to
15 make sure we can secure those letters of approval.

16 And there may be some changes necessary to get EA
17 approvals; for example, if we're using an alternative kind
18 of cover or alternative kind of particle size or
19 alternative kind of processing other than specified in the
20 regulations, we're going to have to get that approval.
21 And the EAs may be reluctant to grant that in writing
22 until they know that the regulations are in -- these
23 revised regulations are in effect. And so it would be
24 nice to have a transition period to get all this paperwork
25 taken care of once the rules have been adopted but before

1 they become fully in effect.

2 So those are my questions. I think you've done a
3 great job meeting many of our concerns. And there's just
4 a few more of these remaining concerns that we'd like to
5 see addressed before these regulations are finally adopted
6 by the Board.

7 CHAIRPERSON PAPARIAN: Mr. Jones.

8 COMMITTEE MEMBER JONES: A question for Mr. de
9 Bie.

10 Thanks, Mr. White.

11 I guess it's different with different LEAs. But
12 Chuck brings up an issue that, you know, there's some
13 verbal, there's some others that -- I think a lot of them
14 are probably attachments to the RDSI or JTD, right where
15 they just note where they don't have to go through any
16 kind of a revision, but it's there when the next revision
17 does come through. That's pretty standard, isn't it, that
18 it would be a --

19 MR. HOHLWEIN: It could be as simple as an RFI
20 amendment, and that would be the standard.

21 COMMITTEE MEMBER JONES: Just the LEA -- just LEA
22 does it, makes a notation, sticks it in with whatever
23 that -- the RFI or whatever --

24 MR. HOHLWEIN: Well, we wouldn't expect to go out
25 to a --

1 COMMITTEE MEMBER JONES: -- the RDSI or JTD or
2 whatever the heck you want to call it?

3 MR. HOHLWEIN: Excuse me.

4 We would not expect to go out to a site and find
5 them using an ADC that was not in their JTD --

6 BOARD MEMBER JONES: Right. Okay.

7 MR. HOHLWEIN: -- if looking at it the other way
8 around.

9 BOARD MEMBER JONES: Right. So part of your
10 instructions to LEAs, while obviously there's going to
11 have to be some instructions on this usage issue, it would
12 seem to me that -- that if they've got those kinds of
13 independent clarifications that may not have been
14 memorialized, it would seem to me we'd have to do that,
15 and that -- that we would take a little bit of time with
16 that.

17 MR. HOHLWEIN: It would. But it does need to be
18 done because of the confusion that's out --

19 COMMITTEE MEMBER JONES: But I think that makes
20 sense. I mean if the rest of the members -- I mean it
21 would make sense that -- it seems to me that's where it
22 should be anyway and probably is required to be there.
23 But --

24 MR. de BIE: Yeah. Just to add two cents. We
25 recently provided some training to LEAs about ADC at the

1 conference and highlighted for them that there was an
2 expectation that there would be approval granted through
3 the RDSI amendment process. And so this having it in reg
4 just affirms that and gives them the ability to work with
5 the operator to spell out what's the situation.

6 And, yes, there probably is some variation out
7 there in terms of how those approvals are. So we'll be
8 looking at some phase-in to, you know, sort of catch up.
9 But also we're now layering in a request for additional
10 detail in that RDSI. And so, you know, people will need
11 time to, you know, develop that detail and have it
12 included in their document.

13 So we'll look at some appropriate phase-in for
14 all or some of the regulations.

15 CHAIRPERSON PAPARIAN: Okay. Mr. Murray.

16 MR. MURRAY: Mr. Chair, members. Mark Murray
17 with Californians Against Waste.

18 I don't think it's a surprise to anyone that
19 we're not happy with the idea of providing diversion
20 credit -- full diversion credit for material that's used
21 as daily cover at landfills. And given that -- I suppose
22 we could spend the next several months with these
23 regulations trying to figure out ways to jerk around the
24 haulers so that they get the minimum amount of diversion
25 from this. But I frankly don't have the time to do that

1 and I'm not sure that that would be all that productive.

2 We do appreciate the general thrust of the
3 regulations so far in terms of trying to provide clarity
4 in what is I think a very unclear area in terms of trying
5 to discern between garbage and cover.

6 Scott Walker presented some photos to Board
7 members some months ago on this issue. And I couldn't
8 tell the difference between the daily cover and the
9 garbage. And I think that -- I'm not sure that even
10 someone -- the enforcement agencies with their expertise
11 are going to be able to do that. And I think -- I'm
12 concerned that we're putting them in a very awkward and
13 impossible position.

14 And, frankly, I'm not sure I want local
15 enforcement agencies spending their limited time taking
16 enforcement actions or going to landfills and doing
17 inspections, trying to measure the amount of diversion
18 credit that a jurisdiction's getting.

19 But having said that, I appreciate the thrust of
20 these regulations and trying to provide clarity in this
21 area. I think that there are -- given my obvious bias on
22 this issue, I think -- and given the staff's description
23 of their concerns about the use of daily cover in terms of
24 odor emissions and litter, I don't think the 30-day period
25 is adequate. I think that if we're looking for an even

1 playing field and if we're looking to mitigate the impacts
2 associated with the use of daily -- using alternative
3 daily cover, then we think the soil requirement should be
4 a minimum of every week, which would stay the same,
5 therefore, an even playing field, as those landfills that
6 close one day a week. So we would propose that change.

7 I'm concerned about the use of the term
8 "beneficial reuse." "Reuse" has a specific meaning in the
9 world of recycling in terms of the hierarchy of waste
10 reduction, recycling, and composting. Again, we recognize
11 the value of using these secondary materials in a landfill
12 environment, and that value keeps that material from being
13 disposed. But to then describe this material as actually
14 being a reuse activity I think is inconsistent with the
15 way the term is used throughout the act, and it
16 provides -- it creates a misimpression of the value of
17 this particular activity.

18 Nobody's objecting to the use of these materials
19 for these beneficial uses. But to describe that use as
20 reuse, we object to that.

21 In terms of the -- you know, I guess, Mr.
22 Paparian, you asked the question earlier in terms of
23 potential fining authority. We may not agree on whether
24 or not someone should get diversion credit for the use of
25 ADC. But at the end of the day the biggest problem we

1 have is we've created this incredible incentive for folks
2 to abuse the ADC system in terms of piling on material.
3 I'm not sure what the percentage of disposal facilities in
4 the state are that are abusing ADC in order to get this
5 additional credit. But if we could do a better job of
6 capturing that abuse, then it seems to me that a lot of
7 these other nitpicky issues would potentially go away.

8 These regulations may not be the place to put
9 that mechanism in place. But I would encourage the Board
10 and, frankly, the creativity of the legal staff to try and
11 find a means of penalizing those few jurisdictions -- I'm
12 sure it's not every jurisdiction -- but those few
13 facilities that are abusing ADC, whether it be a fine or
14 some other mechanism, so that that activity is discouraged
15 and it doesn't become this huge kind of number crunching,
16 needle-in-a-haystack activity that we undergo in these
17 regulations and in trying to deal with this issue. So I
18 think if there was a very strong penalty that went after
19 those that are abusing ADC, that may solve -- help address
20 this problem. I'm not sure it will solve it.

21 That's my comments.

22 CHAIRPERSON PAPARIAN: Any questions?

23 Do you want to respond to any of that or no?

24 MR. de BIE: I think just the one question about
25 the term "reuse." And the main reason we changed it

1 from -- on one of the first versions on "use" to "reuse"
2 is to be consistent with the reference in the statute.
3 And I'm looking to Elliot to confirm that.

4 ACTING CHIEF COUNSEL BLOCK: Yeah, I'll confirm
5 that. In fact, the statute does use the term "beneficial
6 reuse" and specifically includes alternative daily cover
7 as one of the types of beneficial reuse. So what we were
8 simply doing there was matching the language of the
9 statute, not necessarily trying to imply anything one way
10 or the other.

11 CHAIRPERSON PAPARIAN: Yeah. Maybe you could
12 point Mr. Murray to that at the break or something. And
13 then we can maybe chat about that again.

14 But I think, you know, Mr. Murray's point is a
15 good one, that we do say reduce, reuse, recycle. And the
16 "reuse" in that context is much different than the "reuse"
17 in an ADC context. But it's in statute. We ought to just
18 take a look at what's there and what the issues are.

19 Chuck Helget.

20 And I don't have any -- this is the last witness
21 on this agenda item. We have one more.

22 MR. HELGET: So make it brief, right?

23 CHAIRPERSON PAPARIAN: Those are your words, not
24 mine. You're always brief.

25 MR. HELGET: Chuck Helget. I'm representing

1 Allied Waste.

2 We're generally very supportive of these
3 regulations. We think the staff has come a long way in
4 making the regulations much clearer and much more
5 enforceable.

6 I echo some of the concerns that were expressed
7 by the previous speakers, Chuck White and Theresa Dodge.

8 The one issue I wanted to try to refocus back in
9 on again was the changes that have been made regarding the
10 EA's authority and the statement that it shall not be
11 their authority to make determinations of overuse, I guess
12 is the term.

13 And with that in mind I'm trying to understand --
14 and maybe this is a question for Elliot, if you would. He
15 described earlier how that process might work. But what I
16 heard him describe was that if an LEA visits your facility
17 or if the Board staff visits your facility on a site
18 inspection and notices that you've got 24 to 26 inches of
19 finely ground, nice ADC laying there, that that's overuse,
20 they can write you up for it, but you would have the
21 benefit of the appeal process.

22 But under the process that -- the second process,
23 which is you go on about running your facility, and some
24 day somebody's sitting in the disposal reporting system
25 section staff, looks at a report that's come up from the

1 county and notices that your ADC usage or beneficial use
2 usage is 40 percent based on just a random calculation --
3 not a random calculation, but on a calculation.

4 I'm assuming then what happens is they say, "This
5 is not right. This is excessive use. We're going to send
6 a note to the operator and tell them that they're
7 overusing ADC and we're going to send a note to BOE to say
8 charge them for this amount."

9 Now, in the normal process with BOE -- and I've
10 gone through this several times with several facilities --
11 when BOE comes out they do an audit -- they tell you, they
12 come out, they do their audit. You get an audit sheet
13 back from them. They tell you what they've found. Then
14 they give you a period of time to respond to that audit.
15 And then if you want, you can actually have a sit-down
16 session. Well, then you respond and you have -- you sit
17 down and you go through the process of how you came to
18 your determinations. And then you'll get a letter back
19 from them basically saying, "Okay. We understand the
20 situation. You don't owe us any money or we may owe you
21 money," and that's sort -- there's a process laid out
22 there. I won't say it's a formal appeal process, but it
23 is laid out in statute.

24 So is that the process that we would follow?

25 MR. de BIE: Elliot, if I may.

1 That's exactly -- almost exactly what we've done
2 in the past relative to going out and doing our audits.
3 And it's almost exactly the way it occurs too, Chuck, is
4 that someone at DRS sees some interesting numbers, some
5 peaks, and that, you know, perks are interest. And then
6 we get field staff along with DRS staff out to the site,
7 do some investigations, get some information together,
8 share it with the operator and the LEA to get feedback on
9 that.

10 And, furthermore, the next step has been to bring
11 that information up to the Board in an agenda item and
12 report that to the Board and get guidance from the Board
13 in terms of what the Board would like to do in that
14 situation.

15 So, yeah, I think -- you know, it's worked in the
16 past to, you know, look at these issues case by case, and
17 we would continue doing it in that fashion.

18 MR. HELGET: That process then, Mr. Chairman and
19 members of the Committee, I think is generally a
20 reasonable process. I'm not sure that it's necessarily
21 comfortable that it's laid out that way in these
22 regulations, because that sentence is a pretty clear
23 statement that the EAs don't have authority in this area.

24 And I guess I would argue that 1) we still
25 believe that the use of ADC should be dictated by

1 performance standards, by health and safety
2 considerations, rather than a, quote, level playing field
3 or economic interests. And we think this again tilts
4 towards economic interests rather than health and safety
5 concerns. And we could envision the situation where an
6 LEA would come to a facility, do an inspection -- maybe
7 you've got a week of heavy rains, heavy wind. They come
8 by the facility, look at it and say, "You need to put more
9 ADC on. You don't have enough cover for this type of
10 weather, and we want you to use additional ADC throughout
11 this period of bad weather, a week or so."

12 So you do that, you do it for health and safety
13 concerns. But you're using far more than you would
14 normally use. That then at some point in time comes and
15 gets spit out in a number due to the disposal reporting
16 system staff, and they look at it and say, "This is a
17 higher number than normal." Now, maybe in this process,
18 they would come back to the facility and the LEA maybe had
19 a record where he made that comment, maybe not.

20 So you end up in a situation where again the
21 action taken here, not an enforcement action but an
22 administrative adjustment of the fees that you pay, I
23 guess would be a way of describing it, would be based on
24 sort of a random decision based on a disposal reporting
25 system that I, quite frankly, don't have a whole lot of

1 confidence in right now.

2 Now, we've seen in the disposal reporting system

3 numbers repeatedly overstatements of the types of

4 materials that you've used for alternative daily cover.

5 Now, I know we're going through reporting system

6 regulation changes at the same time. I've looked at those

7 regulations and I'm still not confident that they fix the

8 problems that have been generated over the years on the

9 ADC issue of alleged overuse. We look at these numbers,

10 people start getting excited, we have an investigation, we

11 come back and we sit down, and for the most part the

12 problems typically were simply misreporting or bad

13 reporting of information.

14 And so I think to some degree that this is a bit

15 of an overreach by changing that authority strictly to the

16 Board's determination. And I would, I guess, suggest

17 there might be some middle ground -- I don't know if Don

18 Gambelin hit on the middle ground -- but that the EAs have

19 some role in the initial determination of what's going on

20 rather than being told or indicated that "we see a problem

21 with your numbers." I mean we do that right now. We've

22 done that -- we did that over the last couple of years.

23 But this is a pretty strong statement, that the EA does

24 not have a role in this, and I have some -- we have some

25 concerns with that.

1 The only other comment I guess I would make was
2 with regard to Chuck White's comments on the grain-size
3 specifications. I would suggest as well that hopefully
4 that would include not just the specific grain-size
5 specification, but those specifications that are also
6 approved by LEA. So being redundant, but I think that's
7 an important point.

8 Any questions? Otherwise I'm done.

9 CHAIRPERSON PAPARIAN: Any questions, members?

10 Okay. You have a lot to chew on. I think you
11 answered some of the questions that were brought forward.
12 I think some of them may require some more back and forth
13 between the staff and some of the stakeholders.

14 But do you feel you have enough to move forward
15 now on the 15-day notice? Do you need more direction from
16 us?

17 MR. de BIE: This is certainly the Committee's
18 opportunity to indicate to staff if there's any
19 modifications to the current proposed version of the regs
20 to be made prior to releasing it for a 15 day. If not,
21 then the version that's in the agenda packet would go out
22 for 15 day, we would get comment on that and make
23 adjustments to the regs accordingly.

24 We've not heard anything today that couldn't be
25 handled during the next 15-day comment period in terms of

1 fine tuning language. You know, it certainly offers an
2 opportunity for commenters to formalize their thoughts and
3 provide those to us in writing, and we would ask, you
4 know, for -- if there's alternative language that would
5 work for them, to provide that to us so it gives that
6 opportunity so that we're not sort of guessing at what the
7 fix would be.

8 But staff is I think fine with the version we
9 have in front of you. And, again, if the Committee would
10 want to make some adjustments, we can incorporate those
11 prior to release for the 15 day.

12 CHAIRPERSON PAPARIAN: Mr. Jones.

13 MR. HOHLWEIN: Just on one point Mr. White said
14 about the six month implementation. We didn't address
15 that in the regs themselves. But staff has no objection
16 to some kind of a phase-in period, whatever the Committee
17 deems appropriate. We just didn't mention that in the
18 regulation package or in the presentations.

19 CHAIRPERSON PAPARIAN: Okay. So I think the
20 commenters had at least a couple months on that for a
21 phase-in?

22 MR. HOHLWEIN: He was saying six months
23 originally, or was it 60 days?

24 ACTING CHIEF COUNSEL BLOCK: If I may. If you're
25 talking about a phase-in where it's a phase-in for the

1 entire change in the reg package, it wouldn't be required
2 that we actually even put those in the regulations, so the
3 Board could at a later date after we get closer direct
4 staff -- when be submit these to the Office of
5 Administrative Law we can specify an effective date for
6 them, so we can say effective two months or three months
7 after approval. And so the Board can make that
8 determination in, you know, a month or two or whenever
9 that's coming forward.

10 CHAIRPERSON PAPARIAN: That would seem to make
11 sense. And, you know, in addition to that you of course
12 have the time in OAL. So it would be a fair amount of
13 notice about these things going into effect.

14 Mr. Jones.

15 COMMITTEE MEMBER JONES: Thanks, Mr. Chair.

16 Just a couple of things. I heard two different
17 answers on this EA responsibility on the ADC overuse. I
18 heard an answer that sounded like the LEAs if they see
19 overuse aren't going to be responsible for the BOE
20 determinations as far as fees and things like that.
21 That's what I thought I heard the first part of the
22 meeting.

23 HOHLWEIN: That's the intent that we're moving.

24 COMMITTEE MEMBER JONES: OKay. Now, I'm hearing
25 in response in Mr. Helget's issues that in fact the DRS

1 system is going to be used to try to determine if there's
2 ADC overuse or beneficial reuse overuse and that it's
3 going to be a function of DRS working with you guys as how
4 I understood the answer on the last one and got a little
5 nervous about that.

6 MR. de BIE: Yeah. And let me clarify. These
7 regs don't change that. That's what we do right now.

8 COMMITTEE MEMBER JONES: But that's usually --

9 MR. de BIE: The last two audits that we went
10 through in 2000 and the last one -- 2000-2001 and the last
11 one was basically finding candidates sites that look like
12 there may be an issue, may be an issue. It's our way of
13 sort of reducing the universe, to go out and investigate.
14 Part of that is what kind of numbers are being reported.

15 Another aspect is, you know, what we hear from
16 the LEA, what we hear from competitors. You know, all
17 that information goes together to put a short list of
18 sites to look at. And that just begins the process.
19 There are site visits. There's record review. There's
20 on-site observation. No determination is made on, you
21 know, what the facts are. It's just a trigger to go out
22 and assess a site.

23 So there's no determination made until the end of
24 this very exhaustive process. And I'll point out that the
25 reg does indicate -- formalize, I guess, that process to

1 some extent in saying that if the Waste Board determines
2 after consulting with the EA and the operator that there's
3 an overuse. So we're actually alluding to the fact that
4 there will be a back and forth before a determination is
5 made. And so we're formalizing the current process.
6 We're not attempting to change the process at all. This
7 is what we've been doing for the last two, three years.

8 COMMITTEE MEMBER JONES: Okay. Now I'll ask the
9 rest of my question.

10 The fact that -- I think it's pretty clear that
11 it's normally a competitor that calls up screaming that
12 somebody's got an advantage. I don't think we have to
13 look too far to figure that one out. And those have all
14 come to a suitable reconciliation that made sense and
15 assured the Board that this weren't abuses.

16 But I still think when you get back to this
17 section, if the EA sees an overuse of ADC, there needs to
18 be a clear cut requirement that they report that to you.
19 So that we don't find out six months later that there is
20 in fact three feet. That's what the point of my question
21 was. And I think that that needs to be clarified because
22 this can be misunderstood as alleviating them of any
23 responsibility, and I don't think that that would make a
24 lot of sense.

25 MR. de BIE: Okay. Understood.

1 Just let you know a little bit of information.
2 We would expect it in the inspection report. And we
3 receive those within 30 days of the inspection. But if
4 there is a need for more immediate notice, we'll look at
5 that and see what we can do in terms of -- you know, if an
6 EA becomes aware of a situation, that they bring that to
7 our attention right away. And I can see, you know, why
8 that would be important, as we don't want maybe an
9 operator thinking they're doing the right thing, you know,
10 and be noticed of that, you know, months and months down
11 the road and then have a huge obligation to recover. So I
12 think we could look at a system here that would obligate
13 us to jump on it faster than we might be doing now.

14 COMMITTEE MEMBER JONES: And then my last
15 question.

16 ADC that does not take care of litter or that
17 actually is creating litter is not appropriate application
18 of ADC, is it?

19 MR. HOHLWEIN: That would be fair to say. It's
20 one of the impacts we see.

21 COMMITTEE MEMBER JONES: And what I'm saying is,
22 there is a standard to use alternative daily cover. The
23 standard sounds to me like the examples you've given.
24 While you may think those are consistent with ADC, I tend
25 to think that they are consistent with a bad application

1 of ADC. Okay. If it's creating a litter problem or it's
2 creating an odor problem, then the ADC is not being put on
3 right or it's and inappropriate ADC, right? I mean isn't
4 that it?

5 That being said, I really think that when you
6 look at this dirt requirement, if it in fact is an entire
7 working face -- you know, I mean the entire month's worth,
8 you got to be eating up space out of a landfill for
9 absolute --

10 MR. HOHLWEIN: -- and we can look at that.

11 COMMITTEE MEMBER JONES: So it was what I had
12 suggested, which means you could have that big of an area,
13 have a real small working face that day, cover that small
14 working face, and you're in compliance with the law.

15 MR. HOHLWEIN: That could be as well.

16 COMMITTEE MEMBER JONES: Okay. So I think that
17 being said, I have a hard time with that, I don't see a
18 value in that. I really don't. I don't see it as, you
19 know, anything more than just something that needs to be
20 looked at. It doesn't make any sense to me. So I
21 couldn't support it, you know.

22 MR. HOHLWEIN: We were looking for the Committee
23 to give us some direction on that, get a feel for what
24 people find from this end and from -- we haven't heard
25 from any LEAs today. But there have been some issues out

1 there. I've run into plenty myself. So we'll bring that
2 forward for your consideration.

3 MR. de BIE: If I might suggest. There may be an
4 alternative way of approaching the issue that staff has
5 brought up about, you know, performance of daily cover and
6 the need for dirt every once in a while. So if we maybe
7 leave this language in so that the debate can be part of
8 this process, and then discuss it the next time it comes
9 up for review by the Board. If we take it out now before
10 it's noticed, then it can't be debated at all. And I'm
11 thinking there may be -- based on the testimony I've
12 received today and your comments, Mr. Jones, that there
13 may be some alternative ways of addressing staff's
14 concerns on this issue other than what we've proposed
15 today.

16 CHAIRPERSON PAPARIAN: So --

17 COMMITTEE MEMBER PEACE: Yeah, I agree with that
18 too. Yeah, I have some current -- same concerns Mr. Jones
19 does. But I think we could leave it in and we could get
20 some more comments on it.

21 MR. HOHLWEIN: Value to the debate then.

22 CHAIRPERSON PAPARIAN: Yeah. And I think you've
23 heard several sides of the debate too, including Mr.
24 Murray.

25 Okay. Ms. Delmatier, go ahead.

1 MS. DELMATIER: I'm sorry. I didn't have a
2 speaker slip, but this an important issue --

3 CHAIRPERSON PAPARIAN: Go ahead and identify
4 yourself for the record.

5 MS. DELMATIER: Denise Delmatier with NorCal
6 Waste Systems.

7 The one question that I have over this debate is,
8 the statute expressly defines ADC a hundred percent of
9 waste diversion. So I'm questioning, under what legal
10 authority can you put in this requirement for soil and --

11 CHAIRPERSON PAPARIAN: That will be one of the
12 issues to discuss over the next comment period.

13 Anything else on this item?

14 Ms. Peace.

15 COMMITTEE MEMBER PEACE: I'd like to hear a
16 little more discussion on the beneficial use-reuse change
17 issue, if we could discuss it a little bit more during
18 this comment period.

19 MR. de BIE: You're looking for that right now
20 or --

21 COMMITTEE MEMBER PEACE: Well, no, no, just
22 during the comment period.

23 MR. de BIE: Okay, certainly. This will be the
24 first time that appears in the version, so it would be an
25 opportunity for commenters to offer an opinion on the

1 change from use to reuse. So okay.

2 CHAIRPERSON PAPARIAN: Okay. I think you've got
3 enough to move forward.

4 All right. That covers this item.

5 I think we'll take a break before the next item.
6 It looks like it's almost five to three right now. We'll
7 try to come back at 3:05.

8 (Thereupon a recess was taken.)

9 CHAIRPERSON PAPARIAN: Okay. Welcome back.
10 Any ex partes?

11 Mr. Jones.

12 COMMITTEE MEMBER JONES: Chuck Helget and John
13 Cupps and Marc Aprea and Don Gambelin on ADC and C&D.

14 CHAIRPERSON PAPARIAN: Mrs. Peace.

15 COMMITTEE MEMBER PEACE: Yes, I spoke with Scott
16 Smithline and Mark Murray from Consumers Against Waste.

17 CHAIRPERSON PAPARIAN: And I also spoke with
18 Scott and Mark Murray from Californians against waste as
19 well as Marc Aprea.

20 COMMITTEE MEMBER PEACE: Sorry. That's
21 Californians against Waste.

22 CHAIRPERSON PAPARIAN: Okay.

23 MS. ANDERSON: Continue.

24 MR. de BIE: All right. So our last item today
25 is Item 27, which is Committee Item F. And it's the

1 discussion and request for rulemaking direction on
2 noticing revisions to the proposed regulations for
3 construction and demolition waste and inert debris
4 disposal regulatory requirements for an additional comment
5 period.

6 We've had these regulations out on a couple of
7 notices. And we're coming back for another version to put
8 out for at least a 15-day comment period.

9 And so I'll pass it on to Allison Spreadborough
10 to give the staff presentation.

11 MS. SPREADBOROUGH: Good afternoon, Mr. Chair and
12 Committee members. My name is Allison Spreadborough.

13 (Thereupon an overhead presentation was
14 Presented as follows.)

15 MS. SPREADBOROUGH: The proposed construction on
16 demolition waste and inert debris disposal regulations
17 were noticed with the Office of Administrative Law on
18 January 17th, 2003, and the 45-day public comment period
19 closed on March 3rd, 2003. The public hearing was held in
20 Sacramento on April 7, 2003, and the latest comment period
21 began on July 9th, 2003, and ended on July 24th.

22 Based on all the 15-day comment -- public
23 comments and staff input, staff have made changes, some
24 technical in nature, to the regulation package. Staff is
25 requesting direction from the Committee for a final 15-day

1 comment period.

2 Staff would like to remind the Committee that the
3 regulations currently place sites into the notification,
4 registration, and full permit tier based on the potential
5 impact to public health, safety, and the environment.

6 Permitting and Enforcement staff have consulted
7 with staff in the Division of Planning and Local
8 Assistance and have determined the following: That an
9 operation is not required to obtain a solid waste facility
10 permit, but would require notification to the LEA, and the
11 disposal reporting requirements shall not apply.

12 Staff have also determined that only permitted
13 solid waste disposal sites are required to pay the Board
14 of Equalization disposal fees. Therefore a disposal
15 operation in the notification tier would not need to pay
16 the fees.

17 Further consultation with the Division of
18 Planning and Local Assistance indicates that in September
19 2002 Governor Davis signed Assembly Bill 2308 into law.
20 The bill allowed the inert waste that is sent to three
21 Board-permitted inert facilities from being considered to
22 be disposal for only the purposes of diversion until the
23 Board has adopted these regulations and they become
24 effective. These facilities are CalMat Reliance Pit No.
25 2, Nu-Way, and Peck Road landfills, all located in Los

1 Angeles County.

2 Assembly Bill 2308 also provides an opportunity
3 for the Board to consider how inert wastes should be
4 regulated. The bill does not predetermine the outcome of
5 these regulations.

6 Legislation passed in 2001, Assembly Bill 173,
7 related to the payment of Board of Equalization fees for
8 recycled materials and inert waste, requires the Board to
9 adopt and file with the Secretary of State by January 1st,
10 2004. Regulations that established an appropriate level
11 of oversight of the management of C&D waste and the
12 management of inert waste at mine reclamation sites, Board
13 staff will make every effort to ensure these proposed
14 regulations are operative by January 1st, 2004, and have
15 determined that the Board must approve the proposed
16 regulations by September of this year to meet the
17 opportune date set in statute.

18 Staff would like to review the comments and the
19 changes made to the regulations based on the comments
20 received. Staff will be recommending Option 1, direct
21 staff to notice the proposed regulations for an additional
22 15-day comment period.

23 Now, for the comments presentation.

24 --o0o--

25 MS. SPREADBOROUGH: This is a disclaimer by our

1 legal staff. Because of the short timeframe for comment,
2 summary, and response staff may have different and more
3 complete responses when the rulemaking file is submitted
4 to the Office of Administrative Law.

5 --o0o--

6 MS. SPREADBOROUGH: Inert debris engineered fill
7 and disposal status comments:

8 A number of commenters wanted the word "disposal"
9 removed from the definition of inert debris engineered
10 fill operation. And there were also several comments
11 dealing with the use of associating the inert debris
12 engineered fill with a disposal activity.

13 The waste staff has defined inert debris. The
14 majority comes from construction and demolition sources,
15 which is a solid waste. The final deposition of this
16 waste is considered to be a disposal activity pursuant to
17 Public Resources Code 40192.

18 --o0o--

19 MS. SPREADBOROUGH: Here is Public Resources Code
20 40191, explaining what a solid waste is.

21 --o0o--

22 MS. SPREADBOROUGH: And here is that Public
23 Resources Code 40192, describing disposal.

24 --o0o--

25 MS. SPREADBOROUGH: These are diversion impact

1 comments. The first one is: "Regulations may diminish
2 local jurisdiction's ability to meet the AB 939 diversion
3 mandate because of the two new disposal facility
4 classifications."

5 Staff response is: "There should be few, if any,
6 sites that will require a registration or full permit. If
7 one or two facilities get added, this jurisdiction can
8 adjust their diversion programs accordingly. The
9 regulations are not intended to be retroactive."

10 Next comment: "Request to exempt facility
11 disposal tonnage from being counted as AB 939 disposal."

12 Staff response is: "Statute does not allow this.
13 However, the Board can take special circumstances into
14 consideration when evaluating jurisdiction compliance."

15 And I might add, another response to the first
16 two comments is that the Board directed staff to see where
17 the tiers fell into the -- fell before writing --
18 addressing the counting issues and taking into
19 consideration public health, safety, and the environment.

20 The third comment is: "How will the regulations
21 affect the county-wide disposal capacity need projection?"

22 "Recommend disposal capacity needs projection and
23 CIWMPs, exclude the highly unpredictable C&D disposal
24 waste stream."

25 The staff response is: "Statute does not allow

1 to exclude waste from their calculations. But the
2 jurisdiction is allowed the interpretation due to the
3 unpredictable nature of the waste stream. Because so few,
4 if any, facilities are required a permit, there should not
5 be a capacity impact. If a jurisdiction does experience a
6 significant adverse consequence, the Board can look at
7 addressing the issue to make sure they are fairly
8 addressed."

9 --o0o--

10 MS. SPREADBOROUGH: Next, "does the siting
11 element of the CIWMP need to be revised to allow for
12 possible different criteria for those new disposal
13 facilities?"

14 Staff response is: "This would be by case by
15 case, by jurisdiction."

16 Next comment: "Does clean closure removal count
17 for diversion credits?"

18 Staff responds is: "If material removed from a
19 clean closure is not disposed, it will not factor into
20 diversion evaluations."

21 --o0o--

22 MS. SPREADBOROUGH: There were several statements
23 about beneficial reuse. We do not use this term in the
24 regulations, although it is a term used in the proposed
25 alternative daily cover regulations.

1 --o0o--

2 MS. SPREADBOROUGH: Inert debris definition
3 comments.

4 "Crushed glass is also known as glass flour in
5 two industrial operations. It is a finely divided
6 irritant dust. When airborne or in contact with the human
7 body, glass flour poses a significant hazard to eyes,
8 lungs, and skin."

9 Staff response to this comment is: "If any
10 material is potentially hazardous or is hazardous, it
11 would not be allowed at any of these operations or
12 facilities."

13 Next comment: "Fiberglass sheeting is run
14 through machinery or rollers such as in the manufacture of
15 composition shingles. Residues are tiny glass fibers
16 similar in size range to friable asbestos."

17 Staff response is: "This material's prohibitive
18 from inert debris engineered fills. And if regulated
19 under the registration or full permit tier, the disposal
20 activity would be addressed in the plan."

21 Next comment is: "Industrial waste streams
22 and/or bag-house wastes which require special handling
23 procedures or which pose an elevated health risk due to
24 inhalation or dermal contact be prohibitive from the Type
25 A inert debris designation."

1 Staff response is: "Industrial waste streams
2 and/or bag-house wastes would be regulated at a facility."

3 --o0o--

4 MS. SPREADBOROUGH: "The inert debris definition
5 should consist of those materials which can be separated
6 and recovered for reuse."

7 Staff response is: "This language is addressed
8 in the definition of 'inert debris.'"

9 Next: "Do not limit the inert material sent to
10 the inert debris engineered operations if approved of by
11 the Regional Water Quality Control Board."

12 Staff response is: "The Water Board is only
13 concerned with water quality and the Waste Board looks at
14 other issues."

15 --o0o--

16 MS. SPREADBOROUGH: Further: "The public health
17 hazard created by a benign Type B inert waste dispose
18 facility should require no more than a registration permit
19 at most.

20 Staff response is: "The Type B inert waste
21 determination is based on potential impacts to public
22 health, safety, and the environment."

23 Next comment: "There are serious complications
24 involved in trying to tie Type B inert debris permits with
25 a CDI waste permit."

1 Staff response is: "The commenter did not
2 indicate what the complications were."

3 --o0o--

4 MS. SPREADBOROUGH: Scales comments: Several
5 commenters did not like the idea of scales, mostly for
6 economic and logistical reasons, although one commenter
7 liked the idea.

8 The proposed regulations do not require scales,
9 only weight records that can be obtained from other
10 sources such as generator or hauler or off-site scales.

11 --o0o--

12 MS. SPREADBOROUGH: Final cover comments:
13 Several commenters did not like the language in this
14 section. Staff amended the section to allow greater
15 flexibility in the amount of final cover required.

16 --o0o--

17 MS. SPREADBOROUGH: Compaction comment: "We seek
18 to confirm a writing that packed roads operations -- this
19 is in regards to passive compaction -- will comply with a
20 definition of inert debris engineered fill operation and
21 come under regulation in the EA notification tier."

22 Staff's response is: "The answer is yes, if it
23 is constructed and compacted in accordance with all
24 applicable laws and ordinances and in compliance with
25 specifications prepared and certified by an engineer and

1 only receives clean concrete, fully cured asphalt, glass
2 brick, ceramics products."

3 --o0o--

4 MS. SPREADBOROUGH: Implementation time comment:
5 "Thirty-days time for regulatory implementation is
6 inadequate."

7 Staff's response is: "If the Board approves the
8 regulations in September, staff would not expect to submit
9 them to the Office of Administrative Law until early
10 November. Staff can request of OAL an effective date 60
11 days from the filing with the Secretary of State, bringing
12 the effective date of the regulations to February 2004.
13 So potentially LEAs and operators will know what the
14 requirements are five months prior to the effective date.

15 --o0o--

16 MS. SPREADBOROUGH: Public hearing comments:
17 Staff received a number of comments about the problem of
18 conducting a public hearing and the resulting
19 ramifications of the hearing. Board staff have included
20 the section in the proposed regulations to be consistent
21 with the Board's direction in the Phase 1 process.

22 --o0o--

23 MS. SPREADBOROUGH: Enforcement comments: "The
24 EAs should not be precluded from using other appropriate
25 enforcement tools through PRC 14 CCR or local ordinances."

1 Staff's comment is: "EAs can use any appropriate
2 enforcement tool without the proposed tier structure
3 disposal activities and would be required to operate under
4 a full solid waste facilities permit."

5 Next comment: "The regulation will add
6 additional burden to the existing regulatory process
7 because of substantial amount of additional compliance."

8 Staff's response is: "Again, without the permit
9 tier structure all disposal activities would be required
10 to obtain a full permit. Board staff have applied the
11 tier methodology to these operations and facilities based
12 on potential impacts to public health, safety, and the
13 environment."

14 --o0o--

15 MS. SPREADBOROUGH: Three-strikes comments:
16 Staff received several comments regarding the
17 three-strikes provision.

18 Staff believe that this language is consistent
19 with the direction provided to staff during the Phase 1
20 rulemaking development.

21 --o0o--

22 MS. SPREADBOROUGH: Excluded activities comments:
23 There were several comments which excluded activities --
24 about excluded activities in Section 17388.2, many of
25 which were added by the request of stakeholders seeking

1 greater clarity on activities that would and would not be
2 addressed in these regulations. Many of these comments
3 have been addressed by modifying the regulations.

4 --o0o--

5 MS. SPREADBOROUGH: Exemptions comment: "Do
6 exemptions for facilities from solid waste facility
7 permits continue in effect and do previous filings of
8 RDSIs constitute EA notification?"

9 And I'll lump the other one with too.

10 "Also, will the exemption status for existing
11 facilities remain?"

12 The answer to both of these questions is that:
13 "All exemptions will need to be reexamined to see if
14 they're consistent with these regulations."

15 --o0o--

16 MS. SPREADBOROUGH: Disposal operation plan
17 comments: "Will the disposal operation plan be okay for
18 existing facilities with RDSIs currently on file? How
19 does the state's Paperwork Reduction Act fit in these
20 considerations?"

21 Staff's response is: "This can be determined on
22 a case-by-case basis. Potentially the RDSI could meet the
23 requirements of a disposal plan."

24 Next comment: "The Regional Quality Control
25 Board requires quarterly reporting of incoming inert

1 materials for facilities. Is separate reporting required
2 by the IWMB? Are not both agencies divisions of the same
3 Cal EPA and could not one agency be assigned primary
4 responsibility for record keeping?"

5 Staff's response is: "Separate reporting is
6 required, but the same data could be potentially used to
7 meet the requirements."

8 --o0o--

9 MS. SPREADBOROUGH: Miscellaneous comments:
10 "Some of the specific requirements of the regulations
11 appear to conflict with the statements of reasons for the
12 regulations and are tailored for specific sites and
13 operations rather than for broad industry-wide
14 application."

15 Staff's response is: "No specific requirements
16 were identified in this comment."

17 Next comment: "Either reference to the
18 appropriate chapter in Title 27 for disposal facilities is
19 needed or additional language similar to that available in
20 Section 17383.2(a) (the Phase 1 regulations) is needed."

21 Staff response is: "Title 27 is now referenced
22 in the scope."

23 --o0o--

24 MS. SPREADBOROUGH: Miscellaneous comments again:
25 "Under the proposed regulations how many mine reclamation

1 facilities would come under the Board's regulatory
2 authority?"

3 And the second one: "What are their names and
4 locations?"

5 And I'll show those in the next two slides. I'll
6 come back to this.

7 So the next comment is: "Do all of them
8 currently fall within the notification tier or do some
9 operate at a higher tier that will result in inert being
10 counted as disposal?"

11 Staff's response is: "All of these sites may
12 have the potential to be considered an inert debris
13 engineered fill operation. Or if they accept a broader
14 range of inert debris, which includes asphalt roofing
15 shingles or fiberglass, they could be considered to be a
16 Type A disposal facility."

17 Next comment: "If an existing facility changes
18 its operations in such a manner that is no longer in a
19 notification tier, does the inert material now count as
20 disposal?"

21 The answer is: "Yes, from that date onward."

22 --o0o--

23 MS. SPREADBOROUGH: Here are the mine reclamation
24 sites. And I just realized that I left one off, and
25 that's Azusa Land Reclamation.

1 We have CalMat Reliance Pit No. 2, CalMat Vulcan,
2 Carroll Canyon, Chandler's Palos Verdes Sand & Gravel,
3 Hanson Livingston Graham Pit, Holliday Inert Landfill.
4 And these may or may not be mine reclamation in the
5 strictest sense of the word. They may be sites that exist
6 on old mine sites.

7 --o0o--

8 MS. SPREADBOROUGH: We have Nu-Way Live Oak
9 Landfill, Peck Road Gravel Pit, Pleasanton Vulcan,
10 Rodeffer Inert Disposal Site, and Sun Valley and United
11 Rock Products Pit No. 1.

12 --o0o--

13 MS. SPREADBOROUGH: To continue with
14 miscellaneous comments: "Will haulers be notified that
15 the facility to which they are taking in material is no
16 longer in a notification tier?"

17 Staff response is: "Anyone wishing to monitor
18 the regulatory status of the site can submit a written
19 request to the LEA for that information, and will be
20 noticed when that status changes."

21 Next comment: "These regulations pose the risk
22 of re-creating the problems that led to the enactment of
23 AB 2308 and now may affect more jurisdictions throughout
24 the state."

25 Staff response is: "These regulations level the

1 playing field throughout the state. The problems were not
2 described by the commenter."

3 Next comment: "The definitions for 'source
4 separated' and 'separated for reuse' are the same.

5 Staff response is: "They differ in that 'source
6 separated' means recycled material that is separated at
7 the point of generation. This is analogous to a home
8 owner taking his or her recyclables to a recycler. For
9 example, at a C&D site the generator would place C&D
10 debris in a separate bin from MSW. Source-separated
11 recyclable material does not include separated-for-reuse
12 recyclable material.

13 "Now, inert debris separated-for-reuse material
14 on the other hand would be inert debris from an MSW
15 transfer processing facility. The operator would separate
16 C&D debris from MSW. And separated-for-reuse recyclable
17 material could also include source-separated recyclable
18 material, which could occur if it leaves the point of
19 generation."

20 --o0o--

21 MS. SPREADBOROUGH: Next comment: "Is it an
22 intention of the proposed regulations to expand the scope
23 of the Integrated Waste Management Act without benefit of
24 legislation?

25 "The distinctions between tiers are based on

1 minor differences, and activities clearly not within the
2 scope of the Integrated Management Act are incorporated by
3 reference as excluded operations.

4 Staff response is: "We have included exclusions
5 at the request of commenters to clarify what these
6 regulations do and do not address."

7 Next comment: "Do federal Subtitle D standards
8 for landfill liners and final covers apply to new C&D
9 disposal facilities?"

10 Staff response is: "The Regional Water Quality
11 Control Board determines on a case-by-case basis whether
12 liners and final covers apply."

13 --o0o--

14 MS. SPREADBOROUGH: And, finally, we've discussed
15 the effect of the regulations on the local fee imposed by
16 L.A. County. Representatives from the county are here in
17 the audience. Her name is Shari Afshari. She's here to
18 provide additional information.

19 It is staff's understanding that the regulations
20 will have no effect on the L.A. County fee.

21 This concludes staff's presentation. Thank you.

22 CHAIRPERSON PAPARIAN: Thank you.

23 Any comments before we hear from the speakers?

24 Mr. Jones.

25 COMMITTEE MEMBER JONES: I have a couple of

1 questions.

2 The treatment in the excluded notification tier
3 of engineered fill activities having to be called
4 disposal. I heard your answer.

5 But does that -- you've got 19 facilities -- this
6 whole thing started because there were 19 facilities down
7 in that San Gabriel Valley or around that area, 16 of
8 which were exempt, 3 were permitted. That's what this
9 whole thing started about. That's why our C&D regs are
10 four years past due. And the whole thing is all over the
11 fees on those 3 sites.

12 I heard -- or I read the explanation of why these
13 have to be called disposal sites. But I find it
14 interesting that when you look at the chart that was part
15 of this, they don't call them disposal activities; they
16 call it fill activities, in this one right here.

17 You call it under notification an inert debris
18 engineered fill operation. You don't even call it
19 disposal, where you do on every other one. Which kind of
20 lends me to believe that this probably is a solid waste
21 handling facility as opposed to a disposal facility.

22 Because my concern is at the end of the day are
23 those 19 sites or any other engineered inert fills that
24 either could be created or are in creation, are they going
25 to be treated the same? Because I don't want to be back

1 here in another couple of months having to deal with an
2 issue of different treatment because of a term.

3 So I guess my question to you is: Does that
4 treatment affect all 19 of those fills the same? Are they
5 all going to be categorized the same, if they take inert A
6 material? Some of them may fall out because they've taken
7 other parts of the waste stream, and then they'd have to
8 go up. But do they all get treated the same? Because if
9 they don't, this is a waste of time, in my book, in my
10 view.

11 MR. de BIE: I'm not -- I'm personally not clear
12 on what we mean by "treated the same." If they meet the
13 definitions, if they are taking the Type A -- clean Type A
14 and can demonstrate, you know, through, you know, getting
15 an engineer to certify that what they're doing meets some
16 end use, you know, they should be able to meet those
17 requirements for the engineered fill and have a
18 notification tier.

19 And as you indicated, if they take dirty Type A,
20 take some fiberglass, then they'll fall out. If they
21 can't get an engineer to certify that what they're doing
22 is really an engineer fill, then they won't be able to
23 qualify.

24 So we've looked at the sites that we're aware of,
25 and all of them can, right now today, looking at their

1 operations, comply with the requirements or have the
2 potential. They may have to drop a waste stream out or
3 they may have to get certification that they don't have
4 right now. But they certainly have the potential to do
5 that. We don't see anything out there with these sites
6 that would prevent them from getting that -- meeting the
7 definition and meeting the requirements.

8 So it would be our expectation that the LEAs
9 would treat them all the same way, that they wouldn't
10 factor in some other criteria other than what's in the
11 regs in determining what's appropriate.

12 COMMITTEE MEMBER JONES: All right. But there
13 are 16 that are exempt right now.

14 MR. de BIE: They were found exempt from the
15 requirements of a full solid waste facility permit. They
16 were found exempt from those requirements. And some of
17 them were found to need a solid waste facility permit.

18 COMMITTEE MEMBER JONES: Okay. So my question
19 is: Of those 16 -- I mean with their local exemption or
20 wherever they got this exemptions from, do these regs put
21 them all on the same page?

22 MR. de BIE: Again, if they can meet the
23 requirements, yes. There's nothing about the existing
24 situation, whether they have a permit or no permit, that
25 would factor into where they fall after these regs. So,

1 yes, all of them should be able to be treated the same.

2 COMMITTEE MEMBER JONES: Okay. I mean where we
3 look at the beginning of this thing and we talk about our
4 authority, I don't understand why -- under authority why
5 we couldn't have a little discussion about the fact that
6 these engineered inert fills are solid waste handling
7 facilities as opposed to disposal facilities. While, you
8 know, the Board had set up definitions when we went
9 through the tiers, I don't know that it precluded us from
10 ever changing those. It seems to me I see stuff changed
11 every time a new package comes forward and defines
12 something a little differently.

13 Why couldn't we do that and try to keep it
14 simple?

15 MR. de BIE: Well, I'm going to start off by just
16 reiterating that where staff starts is with the statutory
17 definitions, and then I'll ask Michael to clarify where
18 that takes us.

19 STAFF COUNSEL BLEDSOE: Michael Bledsoe from the
20 Legal Office.

21 Mr. Jones, the issue with that particular phrase,
22 "solid waste handling," is that that's defined in the PRC
23 as the collection, transportation, storage, transfer, or
24 processing of solid waste. And the active that would
25 occur at an inert debris engineered fill operation is none

1 of those activities. So that particular phrase doesn't
2 work.

3 There may be other phrases we could use. We
4 could just call it an activity, for example. But that
5 particular phrase, "solid waste handling," does not work
6 just because it's defined differently in the PRC.

7 COMMITTEE MEMBER JONES: Okay. Because it -- you
8 know, we're making an assumption that it is disposal for
9 the purposes of our regulatory oversight, when in effect,
10 in some cases, when they take it for free, you know, to
11 build, upgrade, or to do whatever, you know, I think you'd
12 have a hard time arguing that that's really disposal.

13 STAFF COUNSEL BLEDSOE: Well, for the purposes of
14 our record here, I would argue strenuously that we're not
15 making an assumption at all, that this is in fact
16 disposal. And the only issue that, you know, is sort of
17 on the table is whether we call it disposal in this set of
18 regulations. Certainly this is the final deposition of
19 solid waste to land, and that's our definition of disposal
20 in the PRC.

21 COMMITTEE MEMBER JONES: Okay. Because, you
22 know, one of the things that started this debate about,
23 you know, should these three facilities be paying fees to
24 BOE or not quite a few years ago was that anybody in a
25 truck hauling inert A material could go to any lot in

1 southern California that had a sign on it that said "clean
2 fill wanted" and dump it legally in that field, because it
3 was a fill activity and the material was appropriate for,
4 you know -- and there's none of us here that haven't
5 driven down the street that hasn't seen a sign that says,
6 "clean fill wanted."

7 That was part of the injustice where 16 were not
8 paying fees and 3 were. So at the time I did not agree
9 with our executive director that that needed to be -- that
10 they needed to pay fees on that because I didn't think it
11 was equitable, especially since anybody could take it to
12 any open lot that had a sign asking for clean fill.

13 So I find it a little bit ironic that based on
14 that discussion and based on that premise that because
15 they are doing an inert fill activity, an engineered fill
16 activity, it's a fill activity. And, you know, I'll be
17 the first one to argue with those same people that are in
18 the audience that it's limited by type, because I will
19 never say -- you know, because any landfill is an
20 engineered fill. Okay?

21 So don't misunderstand what I'm saying. I'm not
22 suggesting that every landfill falls into that category.
23 But even though they do, they're all engineered, they're
24 all engineered fills. And actually after our compaction
25 probably within a lot of what the inert sites do because

1 the -- you know, with passive compaction you're not going
2 to really put a -- need to put a compactor on that until
3 you get to the last six feet.

4 But, I think it's important because I'd really
5 hate to do these regs and then find out that we're stuck
6 in the same situation that we were three or four years ago
7 with an inequity. It doesn't make any sense to me. So,
8 you know -- and I think there's plenty of arguments for an
9 engineered fill as just that, that it's an activity as
10 opposed to a disposal.

11 CHAIRPERSON PAPARIAN: Okay. I think that's
12 helped identify one of the issues we need to explore.

13 I have a number of speaker slips.

14 Chuck White from Waste Management.

15 MR. WHITE: Thank you, Mr. Chair, members of the
16 Committee. Chuck White with Waste Management.

17 This was a -- the discussion you just had is a
18 good lead in to really the issue that I wanted to
19 highlight before you today; and, that is, with respect to
20 the clean inert engineered fills and the need to refer to
21 them as disposal operations.

22 I would urge the Board to not adopt regulations
23 that call this kind of activity disposal. It creates a
24 negative connotation to these operations. It opens the
25 door for possible reinstatement of the state disposal fee

1 as well as the disposal reporting system, and it may very
2 well help subject these kinds of operations to other local
3 disposal fees and taxes.

4 And I don't think there's any real need to refer
5 to them as disposal. You can go through -- in fact the
6 comment letter I submitted on the 24th went through and
7 removed the word "disposal" with no apparent impact on any
8 of the requirements that are being proposed for these
9 kinds of facilities. It would seem to be a word that does
10 not have any real impact on the regulations that you're
11 considering for adoption.

12 And with respect to where did all this come from
13 in the first place, I mean for years and years until about
14 the mid-nineties none of these facilities were regulated
15 as disposal facilities. It was when Richard Hansen, the
16 Los Angeles LEA, suggested that three of these facilities
17 should have permits. Well, why did he want to have those
18 permits? I've talked to Richard a number of times, and
19 his concern was not on the ultimate continuing regulation
20 of these facilities as disposal sites. What he was
21 concerned about was ensuring that materials --
22 waste-derived materials were appropriately processed and
23 screened to ensure that only clean inert materials were
24 placed in these engineered fills. This is what he has
25 told me was the purpose of these regulations; not to

1 regulate them necessarily as disposal sites, but to ensure
2 that only clean inert materials were there so as to
3 protect water quality.

4 And I believe that this Board can do the same
5 thing. The Legislature in the last several years has
6 spoken three times on this matter. In each of those times
7 they specifically refer to this activity, that is, mine
8 reclamation engineered fill operations, as inert waste
9 removed from the waste stream and not disposed --
10 repeat -- not disposed in solid waste landfills.

11 This language is in statute today, albeit it
12 would sunset at some point in time if the Board adopts
13 regulations as specified in these statutory sections. But
14 at least the AB 2308 requires that the regulations must
15 address inert waste removed the waste stream and not
16 disposed in landfills in this regulatory package. And I'm
17 not sure that that meets the test of that statute by
18 continuing to call it disposal.

19 I've heard your legal staff -- and I have great
20 respect for -- argue that you need to continue to
21 referring to this as disposal because of the definition in
22 statute for disposal. It's up on your screen right now.
23 However, the Legislature has spoken more recently three
24 times and specifically said that this is material that is
25 removed from the waste stream and not disposed in solid

1 waste landfill. The Legislature in the three bills that
2 have been enacted have worked strenuously to not call this
3 either recycling or disposal, but have intended, we
4 believe, to take it off the table so it's not conceded
5 either as recycling or as disposal. It's kind of a unique
6 category of clean inert waste-derived materials that once
7 they meet the standards of being a clean inert material,
8 when placed in an inert fill activity, it doesn't
9 constitute disposal, it doesn't constitute recycling.
10 It's just simply taken off the table.

11 I believe that this Board has more than adequate
12 authority -- in fact, when we discussed these bills with
13 the Legislature with your Board staff, there was a desire
14 to want to sunset these three legislative provisions and
15 turn over -- revert the authority back to this Board. And
16 the feeling was at the time that we discussed these three
17 bills that the Board had plenty authority to regulate
18 these activities in whatever manner you deemed
19 appropriate, including in a manner that's consistent with
20 those three pieces of legislation, most specifically the
21 recent AB 2308.

22 If you go through your regulations and all the
23 requirements you're imposing on clean inert fills you can
24 argue, and I believe correctly argue, that these are
25 handling standards that are being imposed to the materials

1 that are being processed prior to placement. We're
2 required to screen the materials, make sure it's only
3 clean inert materials, it's been separated from the waste
4 stream. This is all processing. This should be the focus
5 of this Board and of the other regulatory agencies to make
6 sure that inappropriate materials, dirty materials,
7 contaminated materials are not placed in engineered fills.
8 But once the standard for cleanliness has been met through
9 processing, through handling, then there's no need to
10 regulate the continuing operation as disposal.

11 Even the act of compaction -- requiring
12 compaction is a means of processing or handling. It just
13 doesn't necessarily have to be considered to be disposal.

14 So I believe this Board has gotten more than
15 adequate authority through the handling and processing
16 requirements of the statutes, so it does not necessitate
17 you to continue to regulate this material as disposal once
18 it meets the standards of these regs for processing,
19 handling, compaction, and all the other requirements you
20 impose on it.

21 This Board should focus its attention on making
22 sure that only the clean inert materials go into
23 engineered fills. But once that standard is met, you
24 don't really need to continue to regulate that fill, that
25 placement as a disposal facility. In fact, most of the --

1 all of the continuing requirements, financial assurance,
2 groundwater monitoring, other kinds of ongoing disposal
3 standards, aren't applicable because of this because these
4 materials have passed the threshold of cleanliness. And
5 you rightfully need to focus on making sure that every
6 last bit of material that goes into these clean inert
7 fills is clean. But once that standard is met, there's no
8 longer a need to regulate that operation as disposal.

9 And so I would just urge this Board -- this
10 Committee and ultimately the full Board to really think
11 long and hard, if you would, to be consistent with the
12 three pieces of legislation that have been passed on this
13 matter and to regulate this in a manner that's consistent
14 with those bills. Take it off the table. Don't call it
15 recycling. Don't call it disposal. And move forward with
16 basically the standards as you proposed, with the absence
17 of that term "disposal" being used.

18 Thank you very much.

19 CHAIRPERSON PAPARIAN: Thank you, Mr. White.

20 Any questions of Mr. White?

21 Okay. Cyrus Sanai, followed by Larry Sweetser,
22 followed by Donald Gambelin.

23 Go ahead.

24 MR. SANAI: My name is Cyrus Sanai. I'm with the
25 Law Firm of Jeffers, Mangels, Butler & Marmaro.

1 I'm here representing Vulcan Materials, who as
2 you saw from the chart has a fairly large number of sites
3 that directly fall into the category of the inert debris
4 engineered fill operations.

5 Chuck White, who was immediately speaking before
6 me, I think made an excellent discussion of most of the
7 points I was going to raise. So I'm going to hopefully
8 just summarize them and then move on to I think some
9 additional solutions.

10 But before I do that, I'd like to just explain
11 that the particular situation that Chuck did not mention
12 that involves another complete set of policy issues that I
13 think make it very important to remove the concept of
14 disposal and from the inert debris engineered fill
15 operations as least as they apply to sites such as those
16 done by Vulcans.

17 Vulcan is a mining company. And as part of its
18 mining obligations it has reclamation obligations, and
19 which it has to be to increase these holes and then it has
20 to fill them back in. And Vuncan wants to be in a
21 position to do that as quickly and efficiently as
22 possible. And the ability to accept inert debris of the
23 super clean variety in an economic manner is incredibly
24 important be able to restore the land to a productive use.

25 And the difficulty we have here with the reuse of

1 the disposal is, first of all, as Chuck mentioned, is that
2 you have the problem of the specter of bringing this back
3 in both to the fees and to the high level of tiers based
4 on future regulatory changes; and, secondly, to the local
5 fee requirements that have been posed in L.A. County and
6 that could be, frankly, imposed anywhere else.

7 The L.A. County fees are particularly a bad
8 example of the problems that can result from a local
9 jurisdiction taking a very simplistic view of the
10 situation. In L.A. County they put a flat fee per ton
11 based on the material, whatever it is. It could be
12 hazardous wastes. It could be super clean materials. But
13 they put the same fee per ton, which means that you're in
14 a situation where you have a strong economic disadvantage
15 to being able to try and dispose of these materials on
16 your land. Whereas if someone goes ahead and just dumps
17 it for free, as Mr. Jones noted, in a site that says
18 "clean fill wanted," nothing gets paid. Or if it's a
19 site -- if it happens to be a particular site that there's
20 no -- just needs it for a period of less than a year, it's
21 not regulated.

22 And so based on the structure of using -- of
23 defining this activity as disposal, you have created a
24 local agency incentive to apply fees that cut directly
25 against the very important policies of mining reclamation

1 and basically getting these holes filled up as quickly as
2 possible. And I think that was a point that was made very
3 eloquently by Assemblyman Chavez in a letter to the Board
4 that was I believe sent last month.

5 Now, I'm also -- being an attorney, I've taken a
6 look at some of these jurisdictional concerns that have
7 before orally communicated to me by members of the staff.
8 And I do take these issues seriously, but I think they're
9 all very soluble. And they are matters that could be
10 either -- that could arguably be taken by the kind of
11 things that Mr. Jones has talked about, that Mr. White has
12 talked about, or there are other possibilities for
13 establishing a clear definition of the activity that makes
14 it 100 percent clear from a jurisdictional point of view
15 that the Board has and the local agencies have the
16 authority to regulate this in an appropriate fashion but
17 while not calling it a disposal activity.

18 And I'd also point out that no matter what this
19 Board does as a matter of regulation or not regulation,
20 its authority and its jurisdiction is never changed. A
21 board -- a state agency cannot expand its authority and it
22 cannot contract its authority or its jurisdiction based on
23 the regulations that it writes. The jurisdiction
24 authority's handed down based on the statutes, and nothing
25 you do or do not do ever changes that.

1 So at the end of the day, it's more a question I
2 think of comfort and it's consistency and interpretation
3 than any bonafide legal problem that the Board would face
4 if it tries to exclude these kind of inert debris filled
5 operations from the definition of "disposal."

6 Thank you.

7 CHAIRPERSON PAPARIAN: Thank you.

8 Hold on. I think there might be a quick
9 question.

10 Mr. Jones.

11 COMMITTEE MEMBER JONES: Thank you, Mr. Chair.

12 When you talk about our authority, I think it's
13 very clear -- under an inert fill operation there's pretty
14 strict guidelines for you to be allowed to operate in that
15 excluded tier.

16 MR. SANAI: Absolutely.

17 COMMITTEE MEMBER JONES: The only way that we
18 know that you in fact are living within the boundaries is
19 for us to have an inspector go in there to determine for
20 themselves that you in fact don't need to be jumped up to
21 another tier.

22 MR. SANAI: That's right. In other words you
23 could argue that what you were doing is you were ensuring
24 that no disposal is occurring on that site. And that
25 what -- you could take a look at what the engineered fill

1 operation activity's done is essentially -- is a negative
2 exercise of your jurisdiction, trying to prevent these
3 kind of operations from being defined as -- or falling
4 into the category of disposal. So you're basically
5 saying, "Yeah, there's something here that looks like a
6 disposal. But we're going to make sure it isn't a
7 disposal, and we're going to impose these kind of
8 regulations to basically screen out the stuff and make
9 sure it doesn't go on." And that's entirely consistent
10 with the kind of inspection you're doing, with the kind of
11 notification you're doing. I think it all falls very
12 neatly into the realm that that's been handed.

13 And as Mr. White pointed out, the Legislature in
14 subsequent -- and in the AB 2308 said, "This is what you
15 should do." You're going to go on -- put regulations that
16 basically take care of this problem. You've been
17 instructed to do it. And you I think have really done a
18 very good job in the regulatory process of creating a set
19 of regulations that, on the one hand, balance these
20 interests, on the other hand really protect the
21 environment and ensure that only the appropriate kind of
22 materials will be put out there.

23 But I think your right.

24 COMMITTEE MEMBER JONES: All right. Can I ask
25 Mr. --

1 CHAIRPERSON PAPARIAN: Go ahead, Mr. Jones.

2 COMMITTEE MEMBER JONES: Thanks, Mr. Paparian.

3 The difference between the excluded engineered
4 fill -- this is for Mr. de Bie -- the excluded engineered
5 fill activity and the inert A disposal activity is the
6 fact that there is no compaction, there's no engineered
7 standard, we're just basically looking at a disposal
8 activity without the same kind of restrictions on
9 placement of material as well as engineering it to a
10 proper end use, right?

11 That's kind of my short version. But tell me
12 where I'm --

13 MR. de BIE: Sorry. The difference between which
14 two types of activity?

15 COMMITTEE MEMBER JONES: Your excluded engineered
16 fill has a requirement to have an engineered fill plan,
17 continued to -- you know, to go as -- as you fill, to do
18 it to an engineered spec. Your Type A inert disposal
19 really could be taking the same material but have no
20 regard for the engineering aspects or the compaction
21 requirements of an excluded site; is that pretty close?

22 MR. de BIE: Yeah. And just to get the terms
23 down, the inert debris engineered fill, which is under a
24 notification-as-proposed regs, not excluded, but under a
25 notification level, basically two main parts of the

1 criterion staying in that is very clean Type A, so not all
2 Type A, but the cleaner ones, and then a demonstration
3 that you are doing an engineered fill towards an expected
4 end use.

5 The type A inert disposal has a broader category
6 of Type A, so fiberglass and other materials, and you
7 don't have to demonstrate that you're building an
8 engineered fill to an end use. You are doing a disposal
9 activity and doing whatever compaction is required to
10 handle the site as it exists.

11 COMMITTEE MEMBER JONES: All right. And then
12 when we get to a CDI where it says follow Title 27, we're
13 going to require that that be constructed to Subtitle D
14 standards?

15 Yeah, okay. Bledsoe's nodding his head. That's
16 cool. I just wanted to make sure because --

17 MR. de BIE: The liner requirement's still with
18 the regional board. We're not going to go there.

19 COMMITTEE MEMBER JONES: Right. But it's a --
20 under Title 27 that's going to be the requirement because
21 that's where the danger is, in my view.

22 Okay. Thanks.

23 CHAIRPERSON PAPARIAN: Okay. Larry Sweetser,
24 followed by Donald Gambelin, followed by Tom Davis.

25 MR. de BIE: Mr. Paparian, just to point out that

1 the last speaker brought up the local fee and highlighted
2 L.A. County. Just to remind the Committee that there is a
3 representative from L.A. County. I don't believe she's
4 put a speaker slip in, but she's ready and able to speak
5 to those issues as they come up or worked in. --

6 BOARD MEMBER PEACE: It's from my understanding,
7 that no matter what the Board ultimately calls this,
8 whether it's disposal or activity, this will not keep the
9 local jurisdictions from charging a fee if they want to,
10 collecting a fee if they want to.

11 So I guess if the representative from L.A. County
12 would like to comment on that, I would like to hear it.

13 CHAIRPERSON PAPARIAN: I'm sorry, Mr. Sweetser.
14 Why don't we go ahead and here that right now.

15 Mr. Sweetser's very accommodating.

16 But if you could identify yourself for the
17 record.

18 MS. AFSHARI: Yes, I'm Shari Afshari. I'm with
19 the Los Angeles County Department of public Works. Good
20 afternoon.

21 I'd like to state that these regulations should
22 have no impact on our solid waste management fee. These
23 fees have been in place long before AB 939. And all these
24 inert facilities have been paying the fee to the county
25 regardless of if they have been permitted or nonpermitted.

1 And at this point with the existing proposed
2 regulation, we feel that the whole fee -- the same fee is
3 going to be imposed on those facilities.

4 CHAIRPERSON PAPARIAN: Okay. Does that clear
5 that up?

6 COMMITTEE MEMBER PEACE: So even if we were to
7 change the wording from "disposal" to "handling activity,"
8 you would still be charging the fee?

9 MS. AFSHARI: It might require some revisions in
10 the wording from our legal counsel. But basically the way
11 that we have imposed the fees is that on every ton of
12 trash that gets generated and disposed within the county.
13 The final destination still is a definition that we're
14 going to be going with --

15 COMMITTEE MEMBER PEACE: Okay. Thank you.

16 MS. AFSHARI: -- or final deposition of waste
17 into land atmosphere and waters.

18 CHAIRPERSON PAPARIAN: Does your fee cover the
19 LEAs' costs in any way? Is your fee used to help fund the
20 LEA?

21 MS. AFSHARI: Not the solid waste management fee,
22 because all the planning and programs within the L.A.
23 County to comply with AB 939.

24 CHAIRPERSON PAPARIAN: Okay. Have we heard any
25 concern from the LEAs about their added costs of

1 inspecting these facilities?

2 MR. de BIE: We've heard from I believe Riverside
3 County and Orange County about their concern of
4 over-regulating these sites, and that they see that some
5 of their sites shouldn't be regulated at all. So in that
6 context they're saying that any regulation will be a
7 burden on them. And our response, as Allison pointed out,
8 that basically, you know if -- not if -- as currently,
9 some of these sites are regulated under full permits or
10 have been found exempt from the requirements of full
11 permits, and that's the existing structure that we have to
12 work with. So if we didn't tier these and just sort of
13 ignored it all, that's what we would be left with. So
14 here's our attempt to find that balance, that correct
15 place.

16 CHAIRPERSON PAPARIAN: Okay. Thank you.
17 Anything else?

18 MS. AFSHARI: Actually while I'm here I would
19 like to add a couple words.

20 We support these proposed regulations. L.A.
21 County for some time has been encouraging the Waste Board
22 to address the inconsistencies that existed that resulted
23 in the solid waste facilities that goes to an inert
24 facility that has permit versus not permit and to be
25 counted differently.

1 And we believe that this would -- at least takes
2 care of that inconsistency and would balance it in that it
3 levels the playing ground for all those jurisdictions that
4 they're sending their waste to those facilities regardless
5 if it's permitted or not permitted.

6 Therefore, we think that this is going to be
7 taking care of that inconsistency, and we believe that
8 it's going to be adding to basically the control that is
9 going to be there. And we appreciate the effort that has
10 been put in to take care of this.

11 CHAIRPERSON PAPARIAN: Okay. Thank you very
12 much.

13 Larry Sweetser -- thank you for accommodating us
14 there, Larry -- followed by Don Gambelin, followed by Tom
15 Davis.

16 MR. SWEETSER: Larry Sweetser again on behalf of
17 the Rural Counties Environmental Services Joint Powers
18 Authority.

19 We also appreciate the staff's efforts on this
20 long road to C&D. I was one of those people back
21 almost -- what was it -- '95-'96, when we actually started
22 this process.

23 Two concerns, both of which none of the other
24 speakers have dealt with before. And both of these
25 were -- we commented on in the last version. They're not

1 noted for change in this version. So I want to make sure
2 I get those across.

3 One is the scale issue. Same issue, new reg
4 package, as before. All three of the -- all the different
5 requirements for the different types of facilities or
6 operations here impose a mandatory scale requirement
7 regardless of size. And on behalf of the rural counties,
8 where it's hard enough to attract any recycling businesses
9 to come in there and process, the imposition of a scale
10 for some of these small facilities under these regulations
11 would also be another hardship. So we'd like to see some
12 sort of an allowance for a volume conversion. It could be
13 limited as far as maximum tonnage per day. That's not a
14 problem for us. But to have mandatory scales on all sizes
15 of facilities can be a hardship.

16 The second one was a concern actually held
17 over -- Allison reminded me -- from our Phase 1 comments.
18 But I'll extrapolate them into this package. And that's
19 the example of a situation, a public works yard that is
20 involved in constructing roads. It could be different
21 types of activities. This is a good example that I use.
22 That they are going out building a new road. They're
23 removing the old road base, some of the old asphalt,
24 bringing it back to the corporation yard for storage in a
25 bunker.

1 And under these regulation -- under the Phase 1
2 regulations if they hold material for more than a year,
3 that would be considered disposal. And that would impose
4 record-keeping requirements and other things on what is
5 not a problem material. Under these regulations, if they
6 do store that material more than a year, it becomes
7 disposal.

8 I've been struggling trying to figure out what
9 category. And I guess it would go under the inert debris
10 engineered fill and the notification tier.

11 So if you have a corporation yard that isn't
12 tracking their tonnage or the storage time for some of
13 those materials they brought back, they could be forced
14 into getting notification tier more higher for materials
15 that they're reusing again. So that would be a large
16 disincentive for many of them to even try to reuse those
17 materials.

18 So I again want to stress that, and to this
19 package under Phase 2, to try and find another way to
20 accommodate that.

21 So Thank you.

22 MR. de BIE: If I may respond --

23 CHAIRPERSON PAPARIAN: Go ahead.

24 MR. de BIE: -- to the second point.

25 In Phase 1, you know, materials that are held for

1 a period of time can be determined to be disposed. We did
2 add in flexibility for the EA to work with the operator of
3 that facility for extended times. So that that's still
4 there and still an option.

5 What these regs would do is to say if the LEA
6 does determine that it's illegally disposed, then what
7 kind of site it is. And I would disagree with Larry, that
8 if they have clean inerts and they've just got piling it
9 up on site, that doesn't really meet the second part of
10 the definition of Type A inert fill because there isn't an
11 end use and they're not engineering it. So it would
12 probably end up in the disposal category and require a
13 registration permit.

14 CHAIRPERSON PAPARIAN: Okay. Don Gambelin.

15 MR. GAMBELIN: Donald Gambelin, NorCal Waste
16 Systems.

17 Very briefly just want to voice my support for
18 the regulations, and in particular the clarification that
19 was added in one of the most recent changes, that being
20 that a landfill facility, whether or not it has any
21 engineered inert fill activities going on on-site in order
22 the support the landfill, is in fact still firmly
23 regulated under Title 27 and its existing solid waste
24 facility permit and is not subject to these regulations.
25 So the staff added that change recently, and I just want

1 to voice my support for that.

2 Thank you.

3 CHAIRPERSON PAPARIAN: Okay. Thank you.

4 Tom Davis, followed by Marc Aprea, followed by
5 Mark Murray.

6 MR. DAVIS: Mr. Chairman and Committee members,
7 good afternoon. My name is Tom Davis with Justice &
8 Associates.

9 I too would like to commend the staff for their
10 dedication and coming up with a package that we believe
11 for the most part is fair, reasonable, and practical. And
12 we commend them for their diligence.

13 Having said that, I want to address my comments
14 to two points. The first one has to do with the
15 requirement of scales.

16 The proposed Phase 2 regulation sets a standard
17 for accuracy by incorporating by reference a state minimum
18 standard. And that minimum standard is found as Section
19 20510 relative to disposal site records.

20 I will briefly read that. It states: "Each
21 operator shall maintain records of weights or volumes,
22 accept in any form and manner approved by the EA. Such
23 records shall be submitted to the EA upon request,
24 accurate to within 10 percent and adequate for overall
25 planning purposes and forecasting rate of site filling."

1 We are of the opinion that the requirement of
2 scales to meet that accuracy is unwarranted.

3 Also I would like to point out that under the
4 record-keeping requirements in these proposed regulations,
5 which is Section 17389(d), operations are required to
6 operating record of incoming weights or volumes. There's
7 an inconsistency here that we need to take care of.

8 The next point. In the section that defines the
9 ingredients of a disposal operation plan which are
10 required by engineered -- excuse me -- inert debris
11 engineered fill operations, and specifically known as
12 Section 17390(g), it states: "If tonnage is determined
13 from records of cubic yardage, include the conversion
14 factor used in the calculation."

15 Now, from a practical perspective, please
16 consider the following:

17 The cost of scales will be difficult to amortize,
18 the initial cost, that is, especially for operations that
19 are within a year to three years from closing.

20 In addition to that, the ongoing costs of
21 operating the scales, which may include additional
22 manpower, the cost of electricity, maintenance and repair,
23 calibration of the scales, and periodical certification,
24 is unwarranted cost.

25 Also, from a practical perspective, not all sites

1 are compatible or can accept scales. In particular, some
2 of the more rural sites may not have electricity, thus
3 requiring power generator to be brought on-site to
4 generate power to run the electric scales. Adding a power
5 generator to the site unnecessarily is offering additional
6 emissions that, in our viewpoint, are not justifiable.

7 Also, the size, shape, and space available for
8 scales on many sites may not be adequate or for the
9 alignment of the scales to handle trucks, especially the
10 large trucks that need large areas for queuing.

11 Now, we have heard the staff quickly point out
12 that the regulations as proposed allows us an option; and,
13 that is, to use a scale off site. We feel that that is
14 also impractical, for two reasons:

15 First of all, the debris sources for these
16 facilities are multiple, and it would be impractical to
17 require scales at all these sites.

18 One could argue that you could go to a scale such
19 as a public scale, which are not commonly found and may in
20 many cases be out of the way for the trucks that are
21 hauling material to these operations. In doing so, it
22 would create extra time spent on the road unnecessarily,
23 the fuel consumed to going to these scales is not
24 warranted, the pollutants that would be emitted for this
25 procedure of going to a public scale before they come to

1 the fill operation, the wear and tear on the streets are
2 not necessary, and not to mention the additional truck
3 traffic congestion. All of this is unwarranted.

4 In my opinion there has not been a good reason
5 given by anyone why scales are necessary to record an
6 annual disposal tonnage. And until one is given, we
7 believe this requirement should be deleted from these
8 regulations.

9 My last point has to do with the
10 implementation -- or the phasing-in time. This has been
11 discussed before by others. We feel the 30 days is not
12 adequate. We are suggesting that we should be thinking in
13 the terms of 6 months, as was discussed earlier this
14 afternoon relative to the ADC. This would allow the
15 regulated community to work with the physical improvements
16 as well as handling the overwhelming documentation.

17 I want to thank you for the opportunity to offer
18 my comments this afternoon. And again I want to thank the
19 staff for the good job that they have done thus far.

20 And I'm available to answer any of your
21 questions. Thank you.

22 CHAIRPERSON PAPARIAN: Thank you, Mr. Davis.

23 Okay. Marc Aprea.

24 MR. APREA: Good afternoon Mr. Chair, members of
25 the Committee. Marc Aprea representing Republic Services.

1 I think I'd like to summarize the issue this way:

2 And, that is, should clean Type A inerts be counted as
3 disposal if they are placed anywhere other than a
4 regulated municipal solid waste landfill. And we would
5 urge that you answer the question in the negative, no.

6 Because if the answer is yes, in any way, then
7 local agencies are vulnerable, as they have been in the
8 past, to having significant and surprising increases in
9 their disposal numbers over a waste stream that is largely
10 outside their jurisdiction and their control.

11 We are urging that you look at this Type A clean
12 material going to a facility that's only taking this
13 material, neither as disposal, that you also don't look at
14 it as recycling either.

15 I'd like to spend just a few moments discussing
16 the history of AB 2308, because I think it is significant
17 because it really is the key to this regulatory package.
18 And the background to that was that if you look back to
19 the early 1990s, you had a number of facilities taking
20 throughout the state this Class A material. Then in the
21 mid-1990s as a result of the desire to ensure that the
22 material coming into these facilities was in fact a clean
23 Type A material, local agencies were -- local entities
24 requested that these three facilities in the San Gabriel
25 Basin receive a full solid waste facilities permit.

1 The unintended consequence at the time was that
2 the -- as a result not only did these facilities -- were
3 they required to incur a fee, but they were also required
4 to now count the material coming in as disposal against
5 the host jurisdictions. Last year Assembly Member Chavez
6 introduced legislation to, in essence, state that material
7 going into -- that this clean A material, this Type A
8 material, would not in fact count towards the disposal
9 numbers. And the legislation provided that, rather than
10 trying to micro-manage the Board, directed the Board to go
11 on with its regulatory activity. And that in the event of
12 the regulation's being adopted, that the bill would
13 sunset.

14 One of the questions that we have -- and one of
15 the other impetuses for the bill was that while
16 technically it is possible for any and all jurisdictions
17 to come before this Board and ask for these numbers to be
18 backed out, it was found that it was neither practical nor
19 cost effective. In fact this was not just numbers that
20 you could look at and make a calculation based upon
21 whatever records were then available to the jurisdiction
22 or to the Board, but rather the Board was requiring that
23 the jurisdictions go to these facilities and literally
24 count ton by ton the material that had been gone into
25 these facilities and was counted in order to authorize

1 these numbers for backing outs.

2 As a result, this Board ultimately supported the
3 adoption -- the enactment of AB 2308.

4 While the staff has done a remarkably sound job
5 in terms of developing this regulatory package, there are
6 still some questions that we have that we feel are
7 unanswered. And, that is, what is the universe of
8 facilities that this regulatory package will affect? We
9 have heard 19, or 12 I believe put on the screen earlier.
10 In conversation we'd heard 55. And we'd also heard
11 numbers that are larger. And, again, I'm not disputing
12 the responses. It's just that it's unclear to me what the
13 number -- what's the universe we're talking about?

14 Second, in what categories would the universe
15 be -- would these facilities be placed? That is, would
16 they all be in the notification tier? What would be in
17 the exclusionary tier? How many would be in the
18 registration tier and so forth.

19 Now, we recognize the staff can only give us a
20 best estimate, but we still are looking to that best
21 estimate to understand what the universe is, particularly
22 since we don't have any understanding of what the effects
23 are going to be.

24 Furthermore, this is not just about a level
25 playing field by these three facilities versus all the

1 other mine reclamation facilities out there. This
2 legislation, 2308, was very much about ensuring that local
3 jurisdictions did not receive a significant surprise in
4 their disposal reporting numbers. Remember, that these
5 disposal reporting numbers are collected, but that the
6 municipalities don't understand what the number is until
7 some time thereafter.

8 Therefore, they are often times as surprised as
9 anyone that the numbers now have pushed them significantly
10 perhaps over or under the 50 percent mark or that they
11 have seen their numbers appreciably change without any
12 explanation until they dig into it.

13 Furthermore, the response to the notification,
14 that is, how can a jurisdiction or a hauler understand
15 what classification the facility is in, we think may be in
16 fact inadequate. Again, recognize that municipalities do
17 not have control over where some of this waste goes. So
18 they in fact, while they may know that a facility does
19 not -- that a particular facility is having their inert
20 waste counted as disposal, cannot act in a quick fashion.
21 They may have to petition the folks at CalTrans or the
22 school district and try to cajole them into sending that
23 waste to another location.

24 Again I remind the Board -- the Committee that
25 the reasons for these regulations was not to merely level

1 the playing field. It was to ensure that inert waste
2 going into these facilities was in fact inert waste.

3 So, in conclusion, I would say that we don't
4 really understand what the effects of these regulations
5 are going to be. We don't understand if municipalities
6 will receive a surprise, what the magnitude of the
7 surprise is. And we think it would be inappropriate for
8 this Board to adopt regulations without a fuller
9 understanding as to what it's consequences could be on a
10 local agency's diversion numbers.

11 So in conclusion we would ask that this Board
12 look at this Type A material, no matter where it is placed
13 other than in municipal solid waste landfill, and not
14 counted as disposal nor count it as recycling.

15 CHAIRPERSON PAPARIAN: Okay. Thank you, Mr.
16 Aprea.

17 Do you have a question -- hold on, Mr. Aprea. I
18 think there's a question for you.

19 COMMITTEE MEMBER PEACE: Well, just a comment.
20 You keep bringing up that you don't know what the
21 consequences will be for the local -- in terms of local
22 diversion and how this will cause problems for the locals.
23 But the only local person I've heard from is from L.A.,
24 and she likes these regulations. And I don't see anybody
25 from any other local jurisdictions here with any concerns

1 for what you seem to be talking about. So I guess maybe
2 I'm missing something here.

3 MR. APREA: Board Member Peace, I can't explain
4 why a local agency isn't here or why they haven't -- I
5 don't know if they've commented or not on the regs. I can
6 only tell you that in the development of AB 2308 and
7 preceding the development of 2308 we had a number of
8 jurisdictions who were involved in raising those concerns.

9 As an explanation, again, is I don't know that
10 we -- while we have seen this movie before, all that in my
11 mind is changed are some of the characters. The plot line
12 is the same. We're talking about regulating facilities in
13 such a manner as to count this clean inert material as
14 disposal. And in the past, we had no -- we didn't think
15 about the consequences. Now we know what the consequences
16 are, both on the fee and on the disposal side.

17 And because there is no data in fact that may
18 suggest that this is what the disposal numbers are going
19 to be or what the fee consequences are going to be, no
20 one's had the experience, perhaps they're not compelled to
21 be before you today.

22 But we -- unless staff can assure us that we are
23 going to see very little in the way of new disposal
24 numbers as a result of these regulations, then I'm
25 compelled to stand here before you and say I've seen this

1 happen before, and the fact is is that we would then --
2 you know, we are appealing to you to avoid this problem so
3 that it can be addressed and that we don't have to in
4 essence go back and undo those things that we didn't want
5 to do in the first place.

6 CHAIRPERSON PAPARIAN: Mr. Jones.

7 COMMITTEE MEMBER JONES: Marc, the -- we had this
8 discussion a couple of times.

9 MR. APREA: Sure.

10 COMMITTEE MEMBER JONES: Twenty-three oh eight
11 took care of those three permitted facilities that were
12 taking the inert material, right?

13 MR. APREA: The problem was manifested at those
14 three facilities, yes.

15 COMMITTEE MEMBER JONES: Those were the three
16 facilities that were in question?

17 MR. APREA: Right.

18 COMMITTEE MEMBER JONES: Part of what you're
19 saying almost sounds like if inert material goes to a Type
20 A disposal facility, that it's going to count as a
21 disposal.

22 MR. APREA: That's what the regulations say.

23 COMMITTEE MEMBER JONES: Exactly. If they go to
24 a C&D site, they're going to count as disposal. That's
25 accurate, because they're different than what those three

1 facilities were that were addressed in 2308 as I see it.

2 I mean I've struggled with trying to understand
3 the issue, and you and I have had a conversation. It's
4 almost like you want to exclude the material type instead
5 of determine where they're going to go. And, you know, so
6 I'm hoping that -- unless I'm missing something, I mean
7 I -- I mean to me these regs are going to take care of an
8 engineered fill, which is going to be -- it's not going to
9 count as disposal or diversion. Short of that, you know,
10 if Republic or BFI or Waste Management decides to take
11 that material to Steve's C&D Landfill and dump it, it's
12 going to go as disposal.

13 Are you asking that that not count as disposal?

14 MR. APREA: Mr. Jones, to answer your question
15 is, yes, because, number 1 --

16 COMMITTEE MEMBER JONES: Yet you want us not to
17 count that because it's inert material?

18 MR. APREA: Number 1, when you looked at these
19 facilities -- and I know you have taken a broad look at
20 all of these facilities and you've raised concerns that I
21 think are legitimate, that these facilities claim they're
22 taking in only the cleanest of clean. And yet you believe
23 that they are not taking in just the cleanest of clean,
24 but that they are taking in materials that go beyond that
25 scope, that they are operating beyond that and aren't

1 operating appropriately. We had heard that consistently
2 from the Board, that that -- and again today, that we
3 don't want to have these facilities not operating
4 properly.

5 Number 2. While the scenario may be different,
6 that is, we're not dealing with just the three facilities
7 in the San Gabriel Basin, the story line is the same, that
8 we're going to change the regulatory scheme; and we don't
9 have an understanding as to whether or not by putting
10 these facilities under regulation and charging this
11 material as disposal -- I'm not talking about whether they
12 ought to be regulated or not. It's whether it should
13 count or not. We run the risk that municipalities will
14 find out well after the fact that they have now received
15 substantial amounts of disposal tonnage in their disposal
16 reporting system.

17 Then the question -- the example that you raised
18 is whether a particular hauler takes material there. That
19 really isn't the real-world circumstance or situation.
20 What we're talking about is a third party, the state of
21 California in the form of CalTrans or a school district
22 which is engaged in the development of a particular
23 project, generating a whole bunch of Type A material over
24 which the jurisdiction has no control.

25 COMMITTEE MEMBER JONES: Right. And there's --

1 MR. APREA: And as a result of that --

2 COMMITTEE MEMBER JONES: -- and there's a remedy
3 for that. We have a remedy within our planning that we
4 can deal with that.

5 MR. APREA: And if that remedy had been viewed as
6 sufficient, 2308 would never have come into play. It
7 wasn't just --

8 BOARD MEMBER JONES: But we had a difference of
9 opinion back then. We were offering that as a solution,
10 and it was deemed that it would be better to do the
11 legislation. So I'm not going to go to the motives for
12 the legislation. I think it got -- it took care of what
13 it needed to take care of.

14 MR. APREA: So to answer your question, the facts
15 situations were -- in other words the manifestation was in
16 these three facilities. But because we don't know where
17 this material is going to go and how much of it is going
18 to get counted, we're concerned that the issue of disposal
19 numbers could be substantial and that the municipalities
20 will find themselves in a circumstance of having
21 significant and surprising increases in their disposal
22 numbers, not because you intended it to be because we
23 don't know.

24 COMMITTEE MEMBER JONES: So as a way to rectify
25 that is that as these regulations get done and our staff

1 knows of all these facilities -- where's our friend from
2 Vulcan? He's sitting back there somewhere. Let's say
3 that one of Vulcan's facilities in fact falls out of the
4 inert A filled engineer because of the material types that
5 it's taking. Now it becomes something other than that.
6 That we notify everybody that in fact this is going to
7 require a higher tier because of an increased risk and
8 just let everybody know ahead of time? Because if that's
9 what this is all about, that to me seems like something
10 that we could accommodate, right?

11 MR. APREA: To answer your question, Mr. Jones,
12 it takes care of the situation where the municipality has
13 control over the waste stream. It still doesn't solve the
14 problem if you don't have control over the waste stream.

15 Again, what I'm suggesting here is that -- we've
16 not counted this material that's going into these other
17 facilities as disposal unless they're in a municipal solid
18 waste landfill, correct? So for us now to count all this
19 material as disposal, when we never have before, is now
20 going to result -- well, we don't know if it will result.
21 But I'm going to submit, since we don't know this, the
22 number could be substantial.

23 COMMITTEE MEMBER JONES: All right. Thanks, Mr.
24 Chair.

25 CHAIRPERSON PAPARIAN: Mr. Block, you're looking

1 like you wanted to say something.

2 ACTING CHIEF COUNSEL BLOCK: Well, I don't want
3 to belabor this and get into the discussion about intent
4 of the legislation, but it seems like it might be
5 appropriate to try in a couple short sentences clarify
6 what we do know that the regulations will do.

7 Any activity -- I'll use that phrase for the
8 moment -- that is in the notification tier is not a solid
9 waste facilities permit. Material going into that would
10 not be subject to the solid waste fee, and material going
11 into that would not be counted in the disposal reporting
12 system. So the only way that the issue comes up at all is
13 if material is going to some other type of facility that
14 is otherwise required to give a permit.

15 CHAIRPERSON PAPARIAN: Mrs. Peace.

16 COMMITTEE MEMBER PEACE: Does staff have any idea
17 how many of these facilities will be going into the Type A
18 or Type B? From what I understand, there's very few.
19 That most of the facilities that we're talking about will
20 be engineered fills -- most of these mine reclamation will
21 fall under that first category, the engineered fill. How
22 many do we actually have that will be in the Type A or
23 Type B and need the registration or the full solid waste
24 permit? Do we know?

25 MR. de BIE: You know, we can't predict the

1 future because the operator has the discretion to change
2 their operation and shift.

3 But based on what we know today, all of them have
4 the potential to qualify for Type A engineered fill.
5 There may be two or three of, you know, 19 plus that may
6 not be able to demonstrate that they're taking in these
7 very clean materials or have an engineer certify that
8 they're building towards an end use.

9 But all of them have the potential to be able to
10 qualify as an engineered fill.

11 COMMITTEE MEMBER PEACE: Okay. Thank you.

12 CHAIRPERSON PAPARIAN: Okay. Thank you, Mr.
13 Aprea.

14 Mark Murray.

15 MR. MURRAY: Mr. Chair, members. Mark Murray
16 with Californians Against Waste. I'm going to try and
17 make two brief points here at this time.

18 And speaking to this issue of what is this stuff
19 and how should it count. And I think that I am in
20 agreement with the comments made by Mr. White earlier
21 regarding that we believe that this material that's
22 going -- and I want to be specific here -- that this inert
23 material going to an engineered fill should count as
24 neither disposal nor diversion. Diversion as opposed to
25 narrowly recycling. I'm not sure if there's a subtle

1 difference there, but I like diversion better.

2 I think that's what these regulations do. I
3 appreciate that maybe there's some subtleties here that
4 could be clarified. And it seems to me that in your
5 definition of engineered fill there is the makings of a
6 clarifying statement.

7 The last sentence in that definition now is: "An
8 inert debris engineered fill operation is not a recycling
9 activity."

10 Now, I'm not sure that that's where a clarifying
11 statement belongs. But a clarifying statement along those
12 lines that said that inert material going to an engineered
13 fill is neither diversion nor disposal, explicitly stating
14 it somewhere in these regulations might go a long way
15 towards clarifying that issue. So that's point number 1.

16 In that same definition -- the reason that we've
17 bought off both in the legislation and now in these
18 regulations in this concept of not counting this as either
19 disposal or diversion is based on my understanding that
20 we're achieving some environmental benefit here by taking
21 these old mines and filling them up with clean inert
22 materials so that those lands -- that land can then be
23 used for some positive purpose, and at the very least not
24 be a dangerous hole in the ground where nasty materials
25 can accumulate.

1 So we think that's a good thing. We're not sure
2 whether that deserves diversion credit. But it's
3 something that shouldn't be penalized as a disposal
4 activity.

5 Now, there's a line in here in this definition
6 that talks about -- it's kind of a qualifying in that
7 amendment that says -- I don't know what the line number
8 is -- "Filling above the surrounding grade level shall
9 only be allowed upon approval of all local government
10 agencies having jurisdictions."

11 I'm not sure -- if that government agency is the
12 regional water board making that determination, that in
13 order to achieve the environmental benefit it's important
14 to raise the level of fill above the surrounding grade,
15 then I can buy that. But if it's the local government
16 saying, "Yeah, we think it's okay if you have the fill be
17 above the surrounding grade," that's not what we had in
18 mind here.

19 The idea should be -- because once you cross that
20 line of filling material up, then it seems to me you've
21 crossed the line from being "We're filling up this hole in
22 the ground" to being "We're a waste management enterprise
23 and we're servicing the waste management industry." So
24 that to me -- I'm not sure that that is an acceptable line
25 in that definition, and I'm not sure what it's intended to

1 add. But it's certainly our intent for the purposes of
2 counting this as neither diversion nor disposal, it's the
3 understanding that it's just filling the hole in the
4 ground and it's not piling on top of that hole.

5 So those are my two comments at this time.

6 CHAIRPERSON PAPARIAN: Does staff want to clarify
7 that latter issue?

8 MR. de BIE: A couple ways of approaching that.
9 One was it was staff's concern that without some language
10 in there that an operator of a Type A engineered fill
11 could just go ahead and fill above grade. So we've
12 inserted here that if they do wish to go above grade, they
13 have to get whatever jurisdictions have approval over
14 their activity before they go ahead. So we wanted to, you
15 know, have something in place that prevented them from
16 going above grade without someone reviewing them. And we
17 didn't think the Waste Board was necessarily the entity
18 that would decide whether that was appropriate or not.

19 If they do go over grade, they still need to
20 continue to comply with the engineered fill requirements.
21 So they'll still need to demonstrate that going above
22 grade, building a hill or whatever, is still consistent
23 with whatever the end use is going to be for that site.

24 So it's not just go over -- you know, build over
25 grade, but they still have to demonstrate that that is

1 connected somehow with that end use and have an engineer
2 certify that.

3 MR. MURRAY: I'm sorry.

4 That's very helpful to have that -- I'm sorry.

5 Where would I find that clarifying language that you just
6 described?

7 MR. de BIE: Allison, did you record that in your
8 mind so you can put it in the final statement of reasons?

9 MS. SPREADBOROUGH: It will definitely be in the
10 final statement of reasons.

11 MR. MURRAY: Okay. That's great. That's kind of
12 what I was looking for.

13 Thanks.

14 CHAIRPERSON PAPARIAN: Okay. Thank you.

15 We have two folks who very incredibly briefly
16 want to add something.

17 Mr. Sanai and Mr. White.

18 MR. SANAI: Two quick points, just -- that
19 comment about above grade actually was one of our
20 comments. And it's because under our -- under some of the
21 reclamation plans there's a strong possibility that we're
22 going to be doing contouring hills, golf courses, that
23 kind of thing, and so we need that kind of flexibility.

24 In general, the regulation for Vulcan sites by
25 the local EAs is much harsher and much more rigorous than

1 anything you guys have ever been planning to do, because
2 the -- it's the local agencies that are really concerned
3 about getting a productive use that they like. And so
4 hills. And if we turn to a golf course, there are going
5 to be some hills maybe.

6 The other question I wanted to deal with -- just
7 going back to the question of disposal and the local fees
8 question -- is, a proper structure of this from the state
9 side we think, while it doesn't eliminate any obligation
10 to deal with L.A. County, will help restructure. And I
11 was just talking with the representative from L.A. County,
12 because there's an overall requirement that the fees be --
13 that the local agencies take be commensurate with their
14 regulatory obligations.

15 We're going to be going to a system where the
16 notification tier's going to put a very light regulatory
17 burden on the local agencies, on L.A. County for
18 administering the plans. Therefore, there should be a
19 relatively light fee structure on that. And our concern
20 on the fee side is to ensure that issue of disposal
21 doesn't get mixed in with that and that they're really
22 understood to be a very different kind of activity, with a
23 different kind of regulation, with a different kind of
24 oversight that is currently -- than is with respect to
25 disposal of solid waste in landfills.

1 That is the issue on the local side.

2 And with respect to all the concerns brought
3 about with the use of the term "disposal" in the other
4 areas brought out by the other speakers, we would
5 generally endorse them.

6 CHAIRPERSON PAPARIAN: Thank you.

7 Mr. White.

8 MR. WHITE: Just very briefly -- Chuck White with
9 Waste Management -- on the local fee issue.

10 We have no objection to paying a fee. What I
11 have a concern about is the imposition of a local disposal
12 fee on a mine reclamation activity that may charge a gate
13 rate of \$2 to \$3 a ton, which is the same fee that's
14 imposed on a landfill that may charge \$20 to \$30 a ton.
15 And it's a completely kind of different operation that
16 Cyrus just mentioned.

17 So we have no objection to paying a fee. And
18 we'd like very much to sit down with L.A. County and any
19 other county that wants to charge a fee for this activity
20 and negotiate a reasonable one. We just don't think it
21 should be a disposal fee. It should be an inert fill fee.

22 CHAIRPERSON PAPARIAN: Sounds like your debate is
23 in a different forum for that.

24 Okay. Anything else that we need to deal with?

25 Mr. Jones.

1 COMMITTEE MEMBER JONES: Just a couple of things.

2 You know, I'm sort of troubled that the fee
3 issue, while it was brought up to me as part of the issues
4 that people were concerned with, even be part of what
5 we're dealing with here. I mean what we're really dealing
6 with here is trying to figure out an appropriate
7 regulatory scheme.

8 But I understand, you know. But I just -- for
9 the record, I think what we're dealing with hear is a
10 regulatory stream that, if nothing else, should be neutral
11 to the issue.

12 I do think that we really need to look at the
13 engineered fill activity as a solid waste handling
14 activity. I think it's clear. We don't have long-term --
15 there are no long-term obligations. There's no
16 closure/post-closure. There's no fees that are being
17 paid. I don't mean your fees. Our fees. There are no
18 state fees that are being paid for closure/post-closure.
19 And I think we just got to -- we've got to be realistic
20 about what it is we're doing.

21 And when we're talking about scales -- and I know
22 scales got added in here because of the insistence,
23 probably by me, that there be scales in the C&D transfer,
24 you know. And it's pretty okay to say, "Well, here. If
25 you want it in here, you're going to get it here."

1 But I think there's a very -- I think that the
2 statements, both from RCRC and from the other gentleman
3 that spoke on rural areas -- I've said this to staff a
4 hundred times, you know. When you don't have electricity
5 and you've got people that break into sheds to steal
6 generators, for what reason? The C&D transfer regs were
7 based on tonnage. All of those tiers were based on a
8 tonnage, both in and out. The whole criteria of that reg
9 package was tonnage. So scales became imperative for
10 those that wanted to stay in a certain tier.

11 This set of regs has nothing to do with tonnage.
12 There is absolutely nothing in this reg package that says
13 anything about qualifying for a certain tier based on
14 tonnage. It's all material type.

15 So I think it's arbitrary in some cases to just
16 insist on a scale because we did it in the transfer regs,
17 and because we're not regulating the same type of issue.

18 And so I think for a lot of the rurals it makes a
19 big -- it creates a big problem.

20 And I think the other thing is when you're
21 dealing with a C&D facility, you're dealing with -- well,
22 especially with an inert facility -- you're dealing with a
23 known quantity of material. Just ask Wes Mindermann about
24 the weight of dirt and C&D and see what he says on that
25 one.

1 So I'd suggest, maybe we got to rethink the
2 scales, especially for the rurals. At least put in an
3 exemptions for the rurals, because it doesn't do anything
4 to make our regs better.

5 CHAIRPERSON PAPARIAN: Mrs. Peace, did you have
6 something?

7 COMMITTEE MEMBER PEACE: No, I think we can leave
8 it in for now and take a look at it this next 15-day
9 comment period along with, you know, other things like
10 whether we're going to change the "disposal" to "activity"
11 or "handling" or leave it the way it is. And let's
12 discuss this at the next comment period.

13 CHAIRPERSON PAPARIAN: Yeah, I'd agree with her.
14 I think -- you know, give us some reasons pro and con, you
15 know, next time you come around. But obviously that's one
16 of the issues that's kind of a flag to take a continuing
17 look at.

18 MR. de BIE: I'm going to seek some direction
19 from the Legal Office. The scale requirement was included
20 in the original draft, correct? Or in the second -- or in
21 the first 15-day.

22 During this second 15-day we're doing a slight
23 modification to that requirement, changing "will" to
24 "shall" and adding "disposal."

25 Is that enough to allow that whole topic to be

1 available for comment and, therefore, change potentially
2 during this next 15-day?

3 ACTING CHIEF COUNSEL BLOCK: If you're not
4 actually adding scales in this 15-day comment period, then
5 if it is the desire of the Committee to get comments on
6 that specifically, you should probably identify that
7 separately and indicate, even though you haven't changed
8 that in this most recent comment period, you are going to
9 accept comments on that particular change. The normal
10 standard is that you're only required -- the minimum
11 requirement -- only required to deal with comments on the
12 change that is in the current version. So Mark is
13 identifying that the scales were actually added the
14 comment period before.

15 But there isn't anything that prevents you from
16 going ahead and considering comments about things that
17 you're not necessarily required to. But I think you
18 should -- if you want that, you should probably identify
19 that in the cover -- the notice cover letter.

20 MR. de BIE: Okay. Because I'm hearing
21 potentially from the Committee that you want to keep that
22 open for debate and not necessarily make a change at this
23 time with this version. And if that's true, then we'll
24 just make an effort to highlight that in the notice
25 saying, "This issue is open for comment generally." Okay.

1 CHAIRPERSON PAPARIAN: Okay. Mrs. Peace, did you
2 have something else?

3 COMMITTEE MEMBER PEACE: No. The only -- before
4 we end this hear I just also wanted to thank staff for all
5 the work that they've done. I know it's a lot of work.
6 And I especially want to thank Allison for the excellent
7 presentation that she gave.

8 CHAIRPERSON PAPARIAN: I think that comment
9 applies to all of us. We really do appreciate your work.
10 And coming off of one slightly difficult regulatory
11 package and jumping into another is -- you know, it's hard
12 stuff. And we really appreciate it.

13 MR. de BIE: And in that efficient manner she
14 just whispered to me to clarify for the Committee that the
15 next time we bring this back will be in September. And in
16 order to meet our timeframe for submittals, we will be
17 looking for the Committee to basically vote and approve a
18 version of the regs at that time.

19 So with the scale issue being debated here, we'll
20 probably end up bringing to you a couple variations of the
21 regulations. Maybe wholesale scales out. You know, a
22 couple variations for you to pick and choose. But we
23 hopefully will be able to be in a place where you will
24 have a version of the regs that will be able to be adopted
25 by the Committee and then the Board.

1 Again, the timeframe in statute has submittal to
2 the Secretary of State no later than the first of 2004 --
3 January 2004. So we need to submit to Office of
4 Administrative Law some time in November in order to give
5 them their six weeks to review and then pass on.

6 CHAIRPERSON PAPARIAN: Good.

7 Okay. Mr. Jones.

8 COMMITTEE MEMBER JONES: Mr. Chair, just a
9 question of the Chair.

10 I know that they're going to leave open the
11 debate on scales. Are they going to also leave open the
12 debate on the engineered fill versus disposal?

13 CHAIRPERSON PAPARIAN: Was that your intention,
14 Mark?

15 MR. de BIE: I missed it.

16 CHAIRPERSON PAPARIAN: Is it your intention to --
17 on a couple of these other items that we've discussed
18 today, to come back with the options for the Board to
19 choose from?

20 COMMITTEE MEMBER JONES: Just engineered fill
21 versus disposal.

22 MR. de BIE: Yes, we'll address all the issues.

23 Now, I had another whisper in my ear saying that
24 potentially when we come back in September, you know, if
25 significant changes are made, it may require additional

1 comment period. And so it's going to be a fine balance
2 here on -- if we pull out a requirement, if that's
3 determined to be significant requiring additional comment
4 or not. The record doesn't indicate anyone out there
5 really wanting scales. So -- you know, so if we did go
6 some other direction, it may not reach that threshold.

7 ACTING CHIEF COUNSEL BLOCK: Let me weigh in
8 here. I'm sorry that this is getting a little bit
9 belabored.

10 Let me make one statement in terms of how OAL
11 would look at this. And then a second suggestion about
12 how we might deal with that. Both of the -- at least the
13 issues we're talking about right now, taking out the scale
14 requirement and changing that "disposal" definition --

15 MR. de BIE: Changing the reference to
16 "disposal."

17 ACTING CHIEF COUNSEL BLOCK: -- are both
18 potentially changes that would require another 15-day
19 comment period. I'm not absolutely sure that we might not
20 be able to do that otherwise. But we have had some recent
21 review of other regulations by OAL where they have
22 surprised us on some interesting things.

23 One way to deal -- and so the problem is that if
24 we put these out as they are now, come back in September
25 and the Committee decides to go ahead and make one or both

1 of those changes, you would not be able to adopt in
2 September. I'm not absolutely sure at this point. I'll
3 have to spend some time looking at that. So you'd have to
4 fit in another 15-day comment period even if there was
5 agreement, quote-unquote, by everybody at the time.

6 One way we can deal with that is if we notice
7 this 15-day version with alternatives for both of those
8 issues. In other words -- and identify them so we get
9 comments on both alternatives. I've run into this issue
10 with OAL in the past. We can get comments on either
11 version of doing those, and then we could pick one of
12 those in September, if that's the date, without having to
13 go back to another 15-day comment period because you would
14 have gotten comments on the two versions.

15 Now, if you then wanted to do something different
16 from what you got in comment on again in September, if
17 there's a third new idea, then we're back to where we
18 were. But --

19 CHAIRPERSON PAPARIAN: It sounds like that could
20 be workable. And I don't want to put the staff, which
21 we've just complimented for their really hard work, to
22 have to do any harder work. But I would imagine that
23 under a crisis situation that we could push it to October
24 and still meet the deadline.

25 ACTING CHIEF COUNSEL BLOCK: I cannot --

1 CHAIRPERSON PAPARIAN: No, I'm seeing a nodded
2 no.

3 COMMITTEE MEMBER PEACE: I don't think I'd like
4 to do that.

5 MR. de BIE: I think the staff's preference would
6 be to follow Elliot's reasoning and to put a version out
7 this time that has at least two alternatives in those
8 areas and collect comment on them; and then in September
9 be able to choose one or the other. Certainly in
10 September if it's still not there, you know, we can look
11 at trying to do something to make it go to October. But
12 it would have to be quite narrow in order to complete the
13 rulemaking package and get it to the Office of
14 Administrative Law.

15 MS. SPREADBOROUGH: Actually we have early
16 November to get this to OAL. So I don't know how we could
17 do another comment period and bring it all there. It's
18 impossible actually. Not that I don't want to do it.
19 It's impossible.

20 CHAIRPERSON PAPARIAN: Okay.

21 COMMITTEE MEMBER PEACE: Or do you want to put
22 them out the way they are and not address these two
23 things?

24 CHAIRPERSON PAPARIAN: No, I think the suggestion
25 that we put out a version that has two language options in

1 it, get comments on those, and then the next -- in
2 September the Board will choose if they want it to go
3 any --

4 COMMITTEE MEMBER PEACE: Well, yeah, that's fine.
5 But I don't want to take any chances that we're not going
6 to hear these in September or have to push it out again
7 for another comment period.

8 CHAIRPERSON PAPARIAN: I think, yeah, that
9 suggestion is a way to assure that it does come back for
10 September.

11 ACTING CHIEF COUNSEL BLOCK: Right. If we do the
12 two alternatives for each of those two issues, then as
13 long as you're picking one of those alternatives for each
14 of those, you wouldn't need to do another 15-day comment
15 period because you would have already done one.

16 COMMITTEE MEMBER PEACE: Okay. I don't want to
17 push it to the limit here.

18 CHAIRPERSON PAPARIAN: Okay. Anything else on
19 that item?

20 Okay. We're at our public comment period. I
21 don't have any speaker slips for public comments.

22 Okay. So this meeting is adjourned.

23 (Thereupon the California Integrated Waste
24 Management Board, Permitting and Enforcement
25 Committee meeting adjourned at 4:51 p.m.)

CERTIFICATE OF REPORTER

I, JAMES F. PETERS, a Certified Shorthand
Reporter of the State of California, and Registered
Professional Reporter, do hereby certify:

That I am a disinterested person herein; that the
foregoing California Integrated Waste Management Board,
Permitting and Enforcement Committee meeting was reported
in shorthand by me, James F. Peters, a Certified Shorthand
Reporter of the State of California, and thereafter
transcribed into typewriting.

I further certify that I am not of counsel or
attorney for any of the parties to said meeting nor in any
way interested in the outcome of said meeting.

IN WITNESS WHEREOF, I have hereunto set my hand
this 12th day of August, 2003.

JAMES F. PETERS, CSR, RPR
Certified Shorthand Reporter
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